

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

FILED

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**INDIANA UTILITY
REGULATORY COMMISSION**

**IN THE MATTER OF THE PETITION OF INDIANA)
BELL TELEPHONE COMPANY, INCORPORATED,)
D/B/A AMERITECH INDIANA PURSUANT TO)
I.C. 8-1-2-61 FOR A THREE-PHASE PROCESS)
COMMISSION REVIEW OF VARIOUS)
SUBMISSIONS OF AMERITECH INDIANA TO)
SHOW COMPLIANCE WITH SECTION 271(C) OF)
THE TELECOMMUNICATIONS ACT OF 1996)**

CAUSE NO. 41657FOR

RESPONSE OF AMERITECH INDIANA TO JULY 12, 2002 DOCKET ENTRY

Pursuant to the Commission's docket entry of July 12, 2002 in this Matter, Indiana Bell Telephone Company, Inc. d/b/a Ameritech Indiana ("Ameritech") respectfully submits its written comments on and redlined version of the "remedy plan" adopted by the Illinois Commerce Commission ("ICC") in its July 10, 2002 Order in ICC Docket No. 01-0120. The redline includes specific modifications to the Illinois Remedy Plan that Ameritech believes are necessary, not only to make the plan acceptable to Ameritech, but also to comport with the principles for a proper plan as established by this Commission and by the FCC.

The purpose of the redline is to establish a compromise that addresses the concerns described by the ICC, while also staying true to the principles for a meaningful remedy plan and incorporating concerns raised by this Commission. There are many aspects of the Illinois Remedy Plan to which Ameritech does not object. To take the most prominent example, the ICC was entirely correct to reject the plan proposed by the CLECs, which was virtually a carbon copy of the initial CLEC proposal here. And although the ICC ordered some modifications to the remedy plan, Ameritech does not object to most of them. There are two modifications, however,

that are so substantial – and represent such significant departures from the remedial principles established by this Commission – that they should not be adopted for use in Indiana.

I. There is no evidence to support the ICC's order that all payment amounts be doubled. To the contrary, the ICC failed to recognize that the Ameritech Illinois plan already provides sufficient incentive for compliance, and already contains mechanisms to multiply payments in the event that performance shortfalls continue over consecutive months. Multiplying these amounts arbitrarily would achieve nothing but to penalize Ameritech and provide a windfall to CLECs without regard to actual performance or any actual damage. Ameritech proposes instead that payment amounts be increased only when performance is poor, and that payment amounts be decreased when performance reaches a high level. That provides additional incentive for Ameritech to achieve high performance and avoid poor performance.

II. The ICC's elimination of the "K table," which the original Illinois plan used to evaluate performance results in the aggregate, would lead to the assessment of large payments in error even if Ameritech achieves full compliance with the nondiscrimination requirements of the law. Plainly, that result is neither fair nor lawful, nor does it encourage compliance. Our proposed compromise is to eliminate the K table but at the same time reduce the rate of "false alarms" in the statistical methodology to reduce the associated risk of false "remedies."

III. This Commission has identified a number of additional concerns that were not addressed by the Illinois Remedy Plan. Further, in the course of the collaborative workshops here in Indiana, the parties have identified several improvements that were also not reflected in the Illinois Remedy Plan.

These modifications are described below, and a “redline” version of the Illinois Remedy Plan reflecting those modifications, along with a “clean” version of the resulting proposal for Indiana, are attached.

BACKGROUND

I. OPERATIONS SUPPORT SYSTEMS (“OSS”) AND PERFORMANCE MEASURES

Operations support systems (“OSS”) are the electronic systems, information, and processes that Ameritech uses to serve its customers. The FCC has held that incumbent local exchange carriers like Ameritech must make their OSS available to requesting carriers on a nondiscriminatory basis, so that those competitors may use the incumbent’s OSS to support their own efforts. The FCC takes a two-step approach to analyzing compliance with this requirement. The first step is to determine whether the incumbent has made its OSS available to requesting carriers. The second step is to evaluate whether those OSS really work, in a nondiscriminatory fashion — in other words, “whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter.” *Texas 271 Order*, ¶ 96. In assessing the latter criterion, operational readiness, the FCC prefers evidence of actual commercial use, which it deems “[t]he most probative evidence that OSS functions are operationally ready.” *Id.* ¶ 98.

The principal form of evidence of commercial use comes from *performance measures*: data that summarize the results of certain wholesale and retail operations (such as the time to install service) for a reporting period (typically, each month). Some performance measures are expressed as an *average*, such as the average time in hours to install or repair service. Others are expressed as a *proportion*, such as the percentage of due dates missed as compared to total installations. The remaining measures are expressed as a *rate*, such as the rate of “trouble” on lines. Performance data are generally broken down, or disaggregated, into separate measurement

categories for each applicable product or service (*e.g.*, resale, unbundled loops), customer type (*e.g.*, residential, business), and certain other characteristics (*e.g.*, whether or not the order requires the “dispatch” of field personnel) to provide a more meaningful comparison.

The data in these performance measures are typically compared against standards, or target levels. Many wholesale functions correspond to an analogous function in Ameritech’s retail operations. In those cases, the retail outcome is the standard level for wholesale performance in that reporting period; in other words, the standard is “parity” between wholesale and retail. Where there is no meaningful retail analog, a pre-set “benchmark” has been established based on a collaborative process between Ameritech, competing carriers, and the staff members of the various state commissions in the Ameritech region. This is the same two-part approach that the FCC uses to evaluate OSS access. *See, e.g., Texas 271 Order*, ¶¶ 94-95.

The FCC has “found that performance measurements provide valuable evidence” regarding an incumbent’s compliance or noncompliance with statutory requirements. *In re Joint Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 F.C.C. Rcd. 6237, ¶ 31 (Jan. 22, 2001) (“*Kansas & Oklahoma 271 Order*”). At the same time, however, the FCC has “emphasize[d]. . . that we do not view each particular metric as wholly dispositive.” *Id.* Rather, the ultimate question – whether the incumbent has complied with the Act’s nondiscrimination standard – “can only be decided based on an analysis of specific facts and circumstances.” *Id.* ¶ 29. Thus, “[w]here a statistically significant difference exists” between wholesale performance and the applicable standard, “we will examine the evidence further” – considering, for example, the degree, duration and explanation for that disparity – to “make our ultimate determination of whether the statutory nondiscrimination requirements are met.” *Id.* ¶ 31.

II. PERFORMANCE ASSURANCE PLANS

A. Indiana Proceedings.

The parties to this proceeding agreed on a set of performance measures for use in Indiana, and have presented those measures to the Commission. Ameritech's performance measurement plan consists of approximately 150 performance measurements, divided into over 3,000 categories. Virtually identical performance measures and standards are in place throughout the Ameritech region.

The "remedy plan" at issue here is a system of self-executing "liquidated damages" to be paid by Ameritech to competing carriers, and "assessments" to be paid to the State, in the event performance fails to meet the established standards. In this docket, the Commission directed the parties to propose a remedy plan for use in Indiana. Ameritech proposed the same plan used by its affiliates in Illinois and Ohio, which was in turn modeled on the plan used by its Southwestern Bell ("SWBT") affiliates in Texas, Kansas, Oklahoma, Arkansas, and Missouri. A similar plan is also in effect in Michigan. The FCC has reviewed and approved the SWBT remedy plan, finding that it satisfied the criteria for an effective plan and that it "would discourage anti-competitive behavior by setting the damages and penalties at a level above the simple cost of doing business." *Texas 271 Order*, ¶ 423. Since then, the FCC has reaffirmed that endorsement, approving virtually identical plans used by SWBT in Kansas, Oklahoma, Arkansas, and Missouri. *Kansas & Oklahoma 271 Order*, ¶¶ 269-280; *In re Joint Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket 01-194, 2001 WL 1456806, ¶¶ 128-134 (rel. Nov. 16, 2001) ("*Arkansas & Missouri 271 Order*"). The CLECs proposed an entirely different plan.

On September 11, 2001, the Commission issued an order finding that neither proposal met its expectations. The Commission directed the parties to negotiate further and provided a set

of guiding principles for those discussions. The parties negotiated at length but were unable to reach agreement. On July 12, 2002, the Commission ordered the parties to file written comments on, and suggested redline versions of, the Illinois Remedy Plan if they were unable to reach agreement as to an acceptable plan by July 26, 2002.

B. The Illinois Proceedings Leading To The Illinois Remedy Plan

As a condition of its approval of the SBC/Ameritech merger, the Illinois Commerce Commission (“ICC”) required Ameritech Illinois to review and implement, to the extent feasible, the performance measurements and related standards and benchmarks that SWBT implemented in Texas. Ameritech Illinois implemented those performance measures and standards, with adaptations (and several additional measurements) agreed to in collaborative workshops established by the ICC.

As a condition of merger approval, the ICC also ordered Ameritech Illinois to review and implement the remedies established by SWBT in Texas, and directed Ameritech Illinois to participate in collaborative discussions regarding any additions, deletions, or changes to the performance measurements, standards/benchmarks, and remedies. As in Indiana, the CLECs participating in the Illinois collaborative sought to replace the SWBT remedy plan with an entirely different plan – in fact, the CLECs’ Illinois proposal was virtually identical to the one offered in Indiana. In addition, the CLECs proposed an additional scheme of standards and remedies described as “Parity with a Floor.” The parties were unable to reach agreement on these proposals. The ALJs issued a Proposed Order on January 22, 2002; all parties filed exceptions to that proposed order, and the ICC entered its order on July 10, 2002.

C. Description of the Original Illinois Plan

This section describes the remedy plan that Ameritech Illinois originally adopted for use in Illinois, which was virtually identical to that proposed for Indiana, so as to provide a starting point for evaluating the ICC's Order and Ameritech's proposed modifications to the Illinois Remedy Plan.

1. When Remedies Are Assessed.

This Commission's Principle No. 4 states that a remedy plan should "clearly and unambiguously support the five factors identified by the FCC in its Bell Atlantic-New York and SBC-Texas 271 orders." In the FCC's words, remedies should provide "a meaningful and significant incentive to comply with the designated performance standards" and a remedy plan should provide "a reasonable structure that is designed to detect and sanction poor performance when it occurs." *In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 F.C.C. Rcd. 3,953, ¶ 433 (1999) ("New York 271 Order"). The critical point here is that remedies should sanction poor performance *only* "when it occurs." To be meaningful, remedies should be assessed only where they are deserved – where Ameritech really provides poor performance to a CLEC or CLECs.

All the parties agreed that, to have meaning, a remedy plan must address the problem of random variation, which is part of everyday life. On average, one expects a perfectly fair coin flip will come up heads 50 percent of the time and tails the other 50 percent, but the individual flips do not always go "heads, tails, heads, tails, heads, tails." Thus, flipping a fair coin 50 times does not always yield exactly 25 heads and 25 tails (in fact, the laws of probability dictate that the odds of that result are only 11 percent). The average family might have 2.3 children, but no family has (or could have) exactly that number.

The same variation affects wholesale and retail performance. In a given month, Ameritech might install a certain type of service in 3 days on average. Not every such installation, however, will take exactly three days. Some installations will take a little less than three days, others a little more – not because of any wrongdoing or discrimination by Ameritech or anyone else, but because of slight differences in random factors like weather (*i.e.* the repair work might take longer in cold or rain) or traffic (*i.e.* it might take a few minutes longer for the technician to arrive at the site due to the timing of traffic lights), or to any other differences in the work, such as the nature of the installation required. As a result, the time for a single installation, or the average of a sample of installations taken from the total, would likely be somewhat different from the overall average. Thus, even if wholesale transactions follow the exact same process, through the exact same systems, and receive the same level of attention and effort from Ameritech as their retail counterparts, the time required for any one order or group of orders (wholesale or retail) is likely to be different. As the FCC has acknowledged (*New York* 271 *Order*, App. B, ¶ 2):

We note that random variation is inherent in the incumbent LEC's process of providing interconnection and access to unbundled network elements. Our concern is primarily that the process that the incumbent LEC employs be nondiscriminatory. Thus, the incumbent LEC could have a provisioning process that is identical in its ability to provide the same function to retail customers and to competitive LECs, but because of random factors outside the control of the BOC, the average completed interval could vary for retail customers and competitive LECs from month to month, such that for one particular month, the metric for competitors would show a longer average interval than would the metric for Bell Atlantic's retail customers. Thus, metric results showing weaker performance to competitors could be due to random variation in the measures, even though the process is inherently nondiscriminatory.

Over the long run, one would expect these differences to even out, but remedies are assessed on subsets of performance data (for a given CLEC, in a given month) and they go only one way (to the CLECs); Ameritech does not receive a remedy or even a credit if wholesale

performance is *better* than the standard. Statistical analysis provides a scientific method for analyzing the many thousands of monthly performance results to assess whether they show some real disparity in performance, as opposed to mere random variation. In the FCC's words, "the use of statistical analysis to take into account random variation in the [performance] metrics is desirable" and "[s]tatistical tests can be used as a tool in determining whether a difference in the measured values of two metrics means that the metrics probably measure two different processes, or instead that the two measurements are likely to have been produced by the same process." *New York 271 Order*, App. B, ¶¶ 2-3.

The statistical concepts are described in more detail below. But the two basic principles underlying the original Illinois plan are common sense:

1. It is more likely that there is an underlying disparity if there is a large gap between wholesale performance and the applicable standard, as opposed to a small difference. If retail performance is three days, one would be more confident that there is a true disparity if wholesale performance is 30 days than if wholesale performance is 3.0000000001 days.

2. It is more likely that there is an underlying disparity if a large number of performance tests show a significant shortfall, than a scattered few. If there are 6,000 performance tests a month, one would be more confident that there is some disparity if there are 5,999 apparent failures than if there is only one.

Statistical science is the method by which these two common-sense principles are applied to performance results to decide whether the number and size of differences make us confident enough of a disparity that Ameritech should pay a remedy. The first step is to look at each individual performance test, measure the size of the difference between wholesale performance and the applicable standard (using a common measure known as a "z-statistic") and compare that

difference to a “critical value” – the size difference or “z” that is large enough to give us 95 percent confidence that there is some underlying disparity. (Another way of expressing this 95 percent confidence level is to say that there is a 5 percent risk of “Type I error” a concept described in more detail below.) For parity tests with 30 or more “observations,” the actual z-statistic is determined from a test known as a “z-test”; for parity tests of less than 30 observations, the z-statistic is generally computed by a permutation test, such as the Fisher Exact Test, which is designed for small sample sizes.

The second step is to look at all the performance tests for that CLEC in the aggregate: to take the number of individual tests that have a z value above the critical value, and compare that number of tests to the “k” value – the number of individual tests exceeding the critical “z” value that is enough to give us 95 percent overall confidence that there is some real disparity instead of differences due to random variation. The threshold values of z and k are set out in a table and are determined from the number of performance tests for a given CLEC in a given month, using the laws of probability and standard statistical equations. As described below, the ICC retained the z test but eliminated the K threshold.

2. The Amount of Remedies Assessed.

Once one determines that a remedy is appropriate, the next step is to calculate its amount. The Illinois Remedy Plan divides performance measures and the associated remedies into two tiers. Tier 1 liquidated damages apply to performance measurements that affect individual CLECs (*e.g.*, the interval for installing or restoring service), and are paid to the CLECs that have received substandard performance if they have adopted the Remedy Plan in their interconnection agreements. Tier 2 assessments apply to general, competition-affecting measurements, and are paid to the State Treasury.

Each tier uses the following basic formula:

(Number of occurrences, if applicable)

x (remedy “base”)

= Remedy Amount

Number of Occurrences. The first factor is designed to reflect the number of transactions that received substandard performance. Most of the liquidated damages and assessments in the Illinois Remedy Plan are calculated on a “per occurrence” basis: the amount increases with the volume (number) of affected transactions. *Id.* at 12-13.¹ The premise, though, is to pay on *affected* transactions, not all transactions. The calculation is best illustrated by an example. Assume (i) that Ameritech filled 1,000 unbundled loop orders for CLEC A, but missed 51 due dates, yielding a rate of missed due dates of 5.1 percent, and (ii) that a rate of 50 missed due dates would have passed the applicable statistical “parity” test. Because Ameritech missed one more due date than it would have missed if it had been in parity, the per-occurrence factor is 1, and a remedy would be paid on the one missed due date that caused Ameritech to miss the applicable standard.

In this way, the number of occurrences reflects both the volume of transactions and the degree of disparity:

- *Volume:* All else equal, if the CLEC in the above example had ten times more orders, the remedy amount would be about ten times higher; if the CLEC had only one-tenth as many orders, the number of occurrences (and thus, the ultimate payment) would be about ten times lower.

¹ There are a few performance measures that do not use the per-occurrence model. For some measures, the volume of transactions is very low, but could affect a large number of customers: for example, the opening of a single NXX could cover a large area and affect service to many end users. In those cases, the existing Plan does not include a “per occurrence” factor; rather, the remedy is calculated on a “per measure” basis. Alternatively, for a few measures, the volume of transactions can be very large, so at a certain point the incremental effect of any single transaction is minimal. In such cases, the existing plan calculates remedies on a per occurrence basis, but places a

- *Degree of Disparity:* The remedy amount also increases as performance worsens.

If Ameritech had missed 70 of the 1,000 due dates in the above example (a rate of about 7 percent), the number of occurrences would have increased from 1 to 20.

Remedy Base. The number of occurrences (if applicable), is then multiplied by a “base” remedy amount. The base increases with the measure’s priority, designated as “High,” “Medium,” or “Low.” A “high” priority is assigned to those measures that have a direct impact on the end user. The base amount also increases with the duration of disparity – that is, if Ameritech missed the same performance measure for that CLEC in the previous month or months. The base amount reaches a “maximum” in the sixth consecutive month, and it is not “reset” to the original amount until Ameritech meets the applicable standard.

As described below, the ICC retained the per-occurrence factor but ordered that all “base” amounts be doubled. Section 8.2 of the Illinois Remedy Plan contains a table that lays out the base amounts for each priority and for duration of disparity.

3. How Remedies Are Paid.

Once a CLEC adopts the Remedy Plan, remedies are automatic and self-executing. As discussed subsequently, Ameritech proposes that performance reports be due on the last business day of the month after the reporting period; the related remedy amounts, if any, are due 30 days after that. Thus, the performance report for July data is due by August 30, and the associated remedies are due by September 30.

4. Modifications Made by the ICC

The ICC correctly retained the existing Remedy Plan as a base, and correctly rejected the new plan proposed by the CLECs. The ICC also directed several changes to the existing plan.

limit on the remedy amount. Effectively, the “per occurrence” remedy becomes a “per measure” remedy on these few measures, once they reach a substantial volume.

Ameritech believes that two of these modifications are inappropriate for use in Indiana (indeed, Ameritech believes them to be inappropriate for use in Illinois, but that is a matter to be addressed on rehearing or judicial review of the ICC's order). As demonstrated below:

I. The Commission should reject the ICC's doubling of all payment amounts, because it lacks evidentiary support. The Commission should instead provide that payment amounts be "indexed" so they increase only if overall performance falls below a given level.

II. The Commission should not simply eliminate the "K table" because that table helps ensure that remedies will not be assessed in error when Ameritech has complied with its obligation of nondiscrimination. Rather, Ameritech Indiana proposes, as a compromise, that in conjunction with the elimination of the K table the rate of "Type I" error in the individual statistical tests should be reduced.

III. Finally, certain issues raised by the July 1, 2002 Docket Entry and by the Commission's Staff are addressed, and revisions to the Illinois Remedy Plan suggested, as appropriate.

DISCUSSION

I. THE COMMISSION SHOULD REJECT THE ICC'S UNSUPPORTED DOUBLING OF REMEDY AMOUNTS IN FAVOR OF "INDEXING" REMEDIES BASED ON THE LEVEL OF ACTUAL PERFORMANCE

As described above, liquidated damages and assessments under the original remedy plan in Illinois are, in most cases, the product of two factors: (1) the number of "occurrences" that received poor performance, multiplied by (2) a "base" dollar amount, which increases with the measure's priority and with the duration (number of consecutive months) of non-compliance. The ICC retained this basic methodology but ordered that all Tier 1 liquidated damages to CLECs and all Tier 2 payments to the State be doubled. The reason why this should not be

adopted “as is” in Indiana is straightforward: The doubling of payments is arbitrary and does not have any relation to the damages that a remedy plan is intended to compensate.²

The Proposed Order in the Illinois docket acknowledged the lack of evidence to support the multipliers. With respect to Tier 1 payments to CLECs, the Proposed Order quite properly referred to such payments as liquidated damages, and recognized (at 33) that “the law on liquidated damages provisions is clear that in order for such a provision to be enforceable, the amount must be a reasonable forecast of, or just compensation for, the harm that is caused by the breach.” The ALJs then correctly acknowledged that there was no evidence or even a contention that the multiplied remedy amounts bore any relation to the damages they are supposed to compensate – indeed, the Proposed Order finds that “[t]he CLECs admit that no attempt has been made to calculate the amount necessary to compensate them adequately for poor performance.” *Id.* Notwithstanding the acknowledged lack of evidence, the ICC’s order directed that payments be doubled – and to highlight the lack of legal or evidentiary support, it eliminated all references to “liquidated damages” and stated that the plan simply required “payments.”

Across-the-board doubling is not only unsupported but unwarranted, because Ameritech has already achieved a high level of wholesale performance. Throughout 2002, Ameritech has passed over 93 percent of its performance tests in Indiana – a level that is particularly impressive when one recalls that the tests are designed to indicate failure based solely on random error 5 percent of the time. (In other words, one would expect to see a 95 percent pass rate even if performance was perfectly in parity, because the statistical tests used to assess performance are designed with a 5 percent risk of “false alarms.”) As the table below shows, this marks a substantial improvement:

² As a result, Ameritech believes that the imposition of such payments in Indiana would constitute a penalty, and would exceed the Commission’s statutory authority.

MONTH	PERCENTAGE OF REMEDY-ELIGIBLE MEASURES MET
January 2001	81.0 %
February 2001	77.5 %
March 2001	77.7 %
April 2001	78.3 %
May 2001	83.1 %
June 2001	84.1 %
July 2001	87.5 %
August 2001	92.6 %
September 2001	91.6 %
October 2001	93.0 %
November 2001	92.7 %
December 2001	89.6 %
January 2002	94.2 %
February 2002	94.0 %
March 2002	95.3 %
April 2002	93.8 %
May 2002	93.4 %

The other Ameritech operating companies, including Ameritech Illinois, have achieved similar improvements, but the ICC failed to appreciate them, partly because the record of the ICC proceedings was closed and did not include performance data subsequent to December of 2000. This Commission is not bound by the Illinois record and it should not repeat the ICC's error: Our compromise proposal automatically allows for payments to be "indexed" based on the level of wholesale performance.

The Michigan Public Service Commission took an approach that starkly contrasts with that of the ICC. In its initial order dated April 17, 2001 with respect to remedy plans, the MPSC ordered Ameritech Michigan to double all payments, just as the ICC did. April 17, 2001 Opinion and Order, MPSC Case No. U-11830, at 16-17. But on rehearing, the MPSC chose a different path: It suspended the multiplier, and decided that increases would only be required if the original remedy amounts were insufficient to improve wholesale performance; the MPSC then committed to periodically reassess the remedy amounts in light of current performance. July 25, 2001 Opinion and Order, MPSC Case No. U-11830, at 2-3.³ That approach provides an added and ongoing incentive for Ameritech Michigan to maintain good performance.

Ameritech proposes here an approach that achieves the same result -- increasing payments only where warranted by poor performance, while decreasing payments as a reward for good performance -- but without the time and effort involved in periodic review proceedings. The remedy amounts would be "indexed" to the overall rate of wholesale performance. The Tier 1 "base" amount is determined based on two criteria: (1) the number of consecutive months where performance has failed to meet the standard (as in the Illinois Remedy Plan), and (2) the overall "pass" rate of Ameritech's wholesale performance for all performance measures subject

³ The MPSC is currently conducting its first review of the remedy amounts.

to remedies across all CLECs. The lowest base amount applies where Ameritech meets or exceeds 92 percent of its performance tests. This level of performance is calculated as an “Index Value”, and is defined in Section 8.3 of the compromise remedy plan. The base amounts are progressively higher when the pass rate is 86-92 percent, 80-86 percent, 74–80 percent, and below 74 percent.

The objective of this proposal is to balance the interest in giving full credit for good performance, on the one hand, against the interest in providing more remedies when performance is not as good. Increasing the base amounts when overall performance declines to a threshold level, and reducing them when overall performance reaches a solid level, provides an even more meaningful incentive to Ameritech. The proposed index approach therefore better addresses the public policy of encouraging good wholesale service, and discouraging poor wholesale service: when overall service improves, the per occurrence payment amount is reduced, and if wholesale service worsens, the per occurrence payment amount is increased.

Changes to the Illinois Remedy Plan that reflect Ameritech’s proposal appear at sections 5.0-5.3, 6.0-6.3 (in both cases, the terms “liquidated damages” and “assessments” were used in lieu of the ICC term “payments”) and sections 8.0-8.11 (setting forth the methodology for remedy “indexing”) of the attached redline.

II. IN LIGHT OF THE ICC’S ELIMINATION OF THE “K TABLE,” WHICH WAS DESIGNED TO ADDRESS THE RISK OF “FALSE FAILURES” IN PERFORMANCE TESTING , OTHER MODIFICATIONS ARE NEEDED

As described above, the Illinois Remedy Plan uses statistical analysis to address random variation and to help ensure that remedies are assessed only for a real disparity in performance. The original Illinois plan (like its counterparts in Michigan, Ohio, and the SWBT states) applied statistical analysis to the results of individual performance tests, and to the results of all such

tests in the aggregate. The individual tests were designed to achieve 95 percent confidence that there was some real disparity in performance for that CLEC in the month reported.

But an individual test is only a small piece of the puzzle. Ameritech has a large number of performance measures, and they are divided into numerous categories or sub-measures. As a result, there are thousands of performance tests each month. Given that each one of those tests has a 5 percent built-in rate of “false alarms” (known as the “Type I error rate”), one would expect a significant number of false failures – individual tests that would erroneously indicate a disparity in performance – even if Ameritech were providing absolutely nondiscriminatory access across the board.

The “K table” is the solution that the original plan used to address the risk of Type I error. Given the large number of performance tests that are conducted each month, one would expect a large number of these tests to indicate non-compliance even when the ILEC is actually fully in compliance. The plan did not assess remedies on the first “K” apparent failures, because some apparent failures are to be expected based solely on random error, even if performance is wholly nondiscriminatory. Remedies are instead assessed on any failures after the K threshold is reached.

The ICC retained the individual statistical tests and the 5 percent Type I error rate, but it eliminated the K table. The result in Illinois is quite straightforward, and quite inappropriate: even if Ameritech Illinois achieves perfectly nondiscriminatory performance, one would expect to see a “pass rate” of only 95 percent, and an apparent “failure rate” of 5 percent, based solely on random error. (This is no mere hypothetical: As described above, current wholesale performance is almost at that level.) Given the large number of performance tests each month, that means that the Illinois Remedy Plan would literally require payment of hundreds of

erroneous “remedies” each month – a problem compounded by the doubling of payment amounts described above.

Ameritech maintains that the K table should be retained. In the interest of compromise, however, Ameritech proposes a middle ground. By eliminating the K table, the Illinois Remedy Plan imposes remedies based solely on individual statistical tests that have a 5 percent “false failure” risk built in – in other words, it is expected to assess “remedies” on 5 out of every 100 tests even if there has been perfect parity. Ameritech instead proposes that, if this Commission eliminates the K table and relies solely on individual “z” tests, it should reduce the rate of Type I error on those tests from 5 percent to 2.5 percent, thereby splitting the difference.

Changes to the Illinois Remedy Plan reflecting this proposal appear at Sections 3.0, 3.1, and 3.2-3.2.3 of the attached redline.

III. THE ICC PLAN SHOULD ALSO BE MODIFIED IN CERTAIN RESPECTS

A. Comments Requested in July 12 Docket Entry

The July 12 Docket Entry directed the parties to comment on seven issues. Ameritech addresses those issues here, and provide recommendations as appropriate.

1) Mechanism and Schedule for the Delivery of Monthly Performance Data Reports

This issue is addressed by Section 10.3 of Ameritech’s proposed redline attached.

2) Parity with a Floor/Ceiling (minimum levels of service)

In Section 8.4 of the redline Ameritech proposes language to allow for definition and application of “floors and ceilings” to measures. Basically, the standard of comparison on these performance measures would still be parity within a specified range of performance. However, a benchmark comparison applies when service provided to the CLEC is above or below that range.

The “floor” means that if Ameritech’s performance for that CLEC is worse than that level, it will be deemed a performance shortfall even if the measure was in parity. The “ceiling” means that if Ameritech’s performance is better than that level, it will not be deemed a performance shortfall even if there is some disparity between wholesale and retail. The basic idea is that if wholesale performance is sufficiently good, there is no real harm to the CLEC even if performance is not as good as retail; conversely, the CLECs have argued that if wholesale (and retail) performance are at a sufficiently low level, they should receive a remedy even if wholesale performance is still as good or better than retail.

In this fashion the proposal allows, for certain high-priority measures, standards of comparison that vary based on actual performance. Specific measures to which this “floors and ceilings” concept might apply are not provided here, as the measures and the corresponding “floors and ceilings” would be negotiated in the six-month review collaboratives.

3) Initiation of Root Cause Analysis for Continued Poor Performance

This issue is addressed at section 8.11 of Ameritech’s proposed Remedy Plan attached.

4) Remedied Performance Measures With Penalties for Change Management for Pre-Ordering, Ordering, Provisioning, Maintenance and Repair, and Billing OSS Interfaces

Change management performance measurements with Tier 1 liquidated damages and/or Tier 2 assessments applying (as appropriate) are being addressed in the current six-month review collaborative. Ameritech, the CLECs and Commission Staffs have discussed the current and proposed change management measures, and expect agreement to be reached through the collaborative process.

**5) Mechanism for Assuring the Integrity and the Retention of Both Raw/Source/
Untransformed Data and Data Used Directly in Reporting Results, as Well as Data
Used to Calculate and Report any Subsequent Restatement of Results**

Assurance of the integrity and retention of the appropriate data to support reconciliation of results and auditing is addressed through the audit provisions of the Remedy Plan. Section 6.5 of the redline reflect Ameritech's proposal for periodic audits (to be performed regionally, thus increasing efficiency and reducing administrative burden) and special CLEC-requested "mini" audits. The main substantive difference from the Illinois Remedy Plan is that the CLEC is expressly required to consult with Ameritech before requesting the mini-audit, in the interest of resolving disputes amicably, and that the CLEC bears the expense of the mini-audit if no material problem is found, thereby giving CLECs an incentive to avoid unwarranted claims.

**6) A Procedure for Defining and Calculating Remedies or Penalties for repeated
Restatement of Performance Results for a Given Performance Measure(s), Including a
Remedy or Penalty Structure and Actual Remedy or Penalty Amounts**

Sections 8.0 through 8.11 set forth proposed requirements regarding notice of restatements, define the timeframe for which restatements are to be applied if they are needed, and provides for reconciliation of remedy under- and over-payments when Ameritech's total liquidated liability damage for a CLEC changes as a result of restatements. Ameritech does not support the concept of remedy payments being triggered solely by the *occurrence* of a restatement. The proposed Remedy Plan clearly indicates, however, that any additional remedy payments due as the result of the actual performance reflected in the restatement must be paid, with interest. Payment of additional remedies resulting from performance reflected in a restatement of results is addressed in Sections 8.9 and 8.10 of the proposed Remedy Plan.

7) Step Up/Step Down Escalation/De-escalation Mechanism or Multipliers for Severe or Chronic Poor Performance

Like the Illinois Remedy Plan, Ameritech's proposal increases "base" liquidated damages amounts if a measure has been missed in consecutive months, up to a maximum level in the sixth consecutive month and thereafter. This provides additional incentive to correct the situation and prevent chronic problems. Under the Illinois Remedy Plan, however, the applicable liquidated damage amount is re-set to the minimum level once performance returns to standard levels. Under Ameritech's proposal, liquidated damage amounts still increase for consecutive misses, and they still decrease when performance returns to standard, but they are not "reset" to the minimum level until performance meets the applicable standard for a specified number of consecutive months. That gives Ameritech some credit for addressing performance issues, and at the same time it provides an added incentive to institute lasting corrective actions.

B. Changes Requested by IURC Staff

The Commission's staff asked the parties to address Staff's issues and questions included with Staff's redlines to a previous Ameritech remedy plan proposal attached to the April 26, 2002 email from Staff. In large part, the issues or questions identified by Staff are addressed in Ameritech's proposed Remedy plan attached or elsewhere in this document. Other items indicate the IURC Staff's desire to hear further discussion on issues. To the extent there has already been discussion, Ameritech's position is reflected in the proposed remedy plan or herein. To the extent further discussion required, Ameritech is willing to participate in such discussions. The following are specific issues or questions that Ameritech finds appropriate to address explicitly herein.

Section 1.1, Question re: Commission access to raw data

SBC Ameritech will provide detail data required by the Commission for resolution of disputes upon request in a format and scope to be mutually agreed to.

Section 5.5, Questions re: CLEC with a different Plan post Commission approval

Results for a CLEC who chooses to adopt a Remedy Plan with a different structure than the Commission-approved plan (as described in Section 5.5), after Commission approval of the Plan, will not be included in the Tier 2 results.

Section 6.4, Question re: Changes to PMs and Interconnection Agreement

SBC Ameritech expects interconnection agreement amendments to be executed that include auto-evolve language for the Remedy Plan and the performance measures.

Section 10.2, Question re: Applicability

Section 10.2 applies to CLEC specific results reported monthly on the website.

Section 10.3, Question re: Applicability

Section 10.3 applies to both Tier 1 liquidated damages and Tier 2 assessments.

Also, Sections 7.0-7.3 propose elimination of the references to commercial arbitration, and of language authorizing the state commission to recommend revocation of interLATA authority under section 271. These modifications were proposed by the Commission's Staff, and Ameritech agrees with them.

C. Uniform "Base" Remedy Amounts For All Measures

The Illinois Remedy Plan classifies performance measures as "high", "medium" or "low" priority, and it sets different base amounts for each priority level. The CLECs objected to the priority system in this matter. While Ameritech maintains (and the ICC found) that priority weights are appropriate, this compromise eliminates the priority weighting system and assigns uniform remedy amounts to each remedied measure. Sections 1.0, 5.4-5.7, and 8.0-8.11 of the attached redline (including the related tables of "base" amounts) reflect this change.

D. Due Date for Performance Reports and Data Requests

Ameritech proposes that the due date for publishing performance reports be changed slightly, from the 20th day of the month after the reporting month to the last business day of the month after the reporting month (that is, reports for July would be due on the last business day of August). The due date for remedy payments would be adjusted in the same manner. This more realistically reflects the time required to produce and verify reports for the large number of measurements and categories involved. The related changes appear at Sections 10.0 through 10.5 of the redline. Similar due dates for responses to CLEC data requests appear in Section 1.1.

E. Payment Method

The Illinois Remedy Plan calls for Tier 1 payments to CLECs to be made by check. Ameritech's proposed changes to sections 5.0-5.3 allow CLECs to choose whether to receive payments by check or by a credit to wholesale bills, and establish the procedure by which CLECs that want payment by check can provide information as to the appropriate place and person to receive the check.

F. Implementation of Remedy Plan

The ICC called for the Illinois Remedy Plan to be implemented (i) as an amendment to CLECs' interconnection agreements by means of an "opt-in" procedure, and (ii) by tariff, pursuant to the ICC's view of state law requirements. Ameritech Indiana proposes that the opt-in procedure is sufficient, and that the use of interconnection agreements (rather than tariffs) comports with the de-regulatory framework established by the 1996 Act. Accordingly, sections 5.4-5.7 of the redline clarify the opt-in process, but do not reflect a tariff. These sections also

clarify the effective date for Tier 2 assessments, which are paid to the State rather than to CLECs.

G. Procedural Threshold for Annual Remedies

The Illinois Remedy Plan sets a “procedural threshold” at 36% of Net Return, using the same formula SWBT uses to calculating the annual caps for Texas, Kansas, Oklahoma, Arkansas, and Missouri. The threshold is to be recalculated annually using publicly available FCC ARMIS reporting data. If the cap is reached, the Commission would institute proceedings to determine the appropriate action.

Ameritech proposes that the plan expressly recognize that such a proceeding could determine if the threshold has been reached due to inadequate service provided by Ameritech, *or* due to deficiencies within the remedy plan itself that cause inappropriate remedy amounts to be paid given the level of service provided by Ameritech to CLECs. If it is determined that the cap has been reached due to inadequate performance by Ameritech, additional remedies could be assessed over and above the threshold amount (as opposed to a “hard” cap that limits the total remedies). Conversely, if the remedy cap has been reached while service provided to CLECs by Ameritech has been adequate, the Commission can modify the remedy plan to provide for remedy payments that are more appropriate for Ameritech’s level of performance. Ameritech does not seek to specify in advance which outcome would be more appropriate in the facts and circumstances of any particular case, only to make clear that the Commission is free to choose. This is also consistent with the Commission’s stated Principle No. 1 for an effective plan, that oversight responsibility rest with the Commission.

Section 7.6 also limits automatic remedies to a particular CLEC to the total revenue Ameritech receives from that CLEC in Indiana – in essence, the CLEC would receive wholesale

service for free – to reduce any incentive for CLECs to game the system by seeking remedies in lieu of actually competing in the market. Note that the plan is not the exclusive remedy for the CLEC; this limitation applies only to the automatic remedies under the plan, not other legal remedies available to the CLEC.

H. Clarifications

Certain changes are self-explanatory and were made to clarify plan language. As to some, the following additional explanations are offered:

- Sections 2.0 and 3.0-3.1: clarifies the intent of the “better of retail or affiliate” comparison when a parity comparison applies to include the requirement that the affiliate has equal to or more than 30 data points.
- Section 2.0: uses the term “modified” to describe the Z-tests included within the plan because they remain modifications of the standard statistical Z-test.
- Sections 3.1.5-3.1.6: Ameritech’s redlined insertions of these Sections add language found in the Michigan Remedy Plan that specify qualifications for use of the Z-test on both Tier 1 and Tier 2 results.
- Section 6.4: proposed changes expressly support the continuation of “six-month review” collaboratives, clarifying what changes are anticipated to the performance measurements through that process.
- Section 6.5.1: proposed changes clarify that the annual “cap” or threshold for remedies is to be set at 36 percent of net return, rather than net income, in accordance with the New York and Texas 271 orders.

CONCLUSION

For all the reasons set forth above, Ameritech proposes the redlined version of the Illinois Remedy Plan with the modifications described above.

Respectfully Submitted,

Ameritech Indiana

MODIFIED AMERITECH ILLINOIS-INDIANA PERFORMANCE REMEDY PLAN

This Performance Remedy Plan sets forth the terms and conditions under which Illinois-Indiana Bell Telephone Company (“Ameritech IllinoisIndiana” or “SBC Ameritech”) will report performance to CLEC and compare that performance to Ameritech Indiana’s own performance or its affiliate’s performance (“parity”), ~~or~~ benchmark criteria, or both, whichever is applicable. This document further provides for enforcement through liquidated damages and assessments.

- 1.0 SBC Ameritech agrees to provide CLEC a monthly report of performance for the performance measures listed in Appendix 1 – Ameritech Performance Measurement User Guide. SBC Ameritech will collect, analyze, and report performance data for these measures in accordance with Ameritech’s Performance Measurement Business Rules~~the business rules defined in Appendix 1, as approved by the Commission. presented to the Illinois Commerce Commission for approval by the Joint Petition in Docket 01-0120.~~ Both the performance measures and the business rules defined in Appendix 1 are subject to modification in accordance with section 6.4 below regarding six-month reviews. SBC Ameritech further agrees to use ~~their~~ two-tiered enforcement structure for performance measurements provided for in this document. The Commission-approved performance measurements shown in Appendix 1 hereto identifies the measurements that belong to Tier-1 (payable to CLECs) or Tier-2 (payable to the stateState) categories, ~~which are further identified as the High, Low and Medium groups as those terms are used below.~~
- 1.1 SBC Ameritech will not levy a separate charge for provision of the data to CLEC called for under this document. Upon CLEC’s request, data files of CLEC’s raw data, or any subset thereof, will be transmitted to CLEC. If CLEC’s request is transmitted to SBC Ameritech on or before the last day of the month for which data is sought, AmeritechSBC Ameritech shall provide the data to CLEC on or before ~~then 20th day of the~~ last day of the following month pursuant to mutually acceptable format, protocol, and transmission media. If CLEC’s request is transmitted to AmeritechSBC Ameritech after the last day of the month for which data is sought, AmeritechSBC Ameritech shall provide the data to CLEC within 20-30 days of receipt pursuant to mutually acceptable format, protocol, and transmission media. Notwithstanding other provisions of this Agreement, the Parties agree that such records will be deemed Proprietary Information.
- 2.0 AmeritechSBC Ameritech will use a statistical test, namely the “Z-test,” for evaluating the difference between two means (Ameritech Indiana retail or its affiliate – whichever is better, provided the number of affiliate data points equals or exceeds 30 – and CLEC) or percentages, or the difference between two ratios for purposes of this document. AmeritechSBC Ameritech agrees to use the modified Z-tests as outlined below as the statistical tests for the determination of parity when the results for AmeritechAmeritech Indiana retail or its affiliate (whichever is better, provided the number of affiliate data points equals or exceeds 30) and the CLEC are compared. This statistical test will compare the CLEC performance to the Ameritech Indiana retail performance or the affiliate performance (whichever is better). If the affiliate data has 30

or fewer observations, the comparison will be to Ameritech Indiana's retail performance. The modified Z-tests are applicable if the number of data points are greater than or equal to 30 for a given disaggregation category. In cases where benchmarks are established, the determination of compliance is through a comparison to the applicable Commission-approved benchmark. ~~non-~~ statistical test which compares the measured performance delivered to the CLEC and the applicable benchmark. For testing compliance for measures for which the number of data points ~~are~~ is 29 or less, the use of permutation tests as outlined below may be used. Parity and benchmark tests and the corresponding sample size requirements are summarized in the following Tables.

Table 1: Tier 1 Parity Test

Sample Size	Test	Non-compliant
$\text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} \geq 30$	Z Tests (3.1)	$Z > Z^c$
$\text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} < 30$	Permutation (3.2)	$Z > Z^c$

Table 2: Tier 2 Parity Test

Sample Size	Test	Non-compliant
$\text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} \geq 30$	Z Tests (3.1)	$Z > Z^c$
$30 > \text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} \geq 10$	Permutation (3.2)	$Z > Z^c$
$10 > \text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} \geq 1$	No Test	N/A

Table 3: Tier 1 Benchmark Test

Sample Size	Test	Non-compliant
$n_{\text{CLEC}} \geq 1$	Non-statistical Test (4.1)	$Z > Z^c$

Table 4: Tier 2 Benchmark Test

Sample Size	Test	Non-compliant
$n_{\text{CLEC}} \geq 10$	Non-statistical Test (4.1)	$Z > Z^c$
$n_{\text{CLEC}} < 10$	No Test	N/A

3.0 Statistical Parity Testing

For purposes of this document, performance for the CLEC on a particular sub-measure (disaggregated level) will be considered in compliance with the parity requirement when the measured results in a single month (whether in the form of means, percents, or ratios) for the same sub-measurement, at equivalent disaggregation, for both Ameritech Indiana and/or its affiliate (whichever is better, provided the number of affiliate data points exceeds 30) and CLEC are used to calculate a Z-test statistic and the resulting value is no greater than the critical Z value (“Z^c”) that would maintain 97.5% confidence that the difference in results reflects disparity. That Critical-Z value is 1.960, as defined below.

3.1 Z Test:

Type I Error: $\alpha = 2.5\%$,
 Z-Critical: $Z^c = 1.645960$.

Performance is non-compliant with the parity requirement if and only if $Z > Z^c$, where Z values for different types of performance measurements are calculated as defined below.

3.1.1 For Measurement results that are expressed as Averages or Means:

$$\text{Modified } Z = (\text{DIFF})/\sigma_{\text{DIFF}}$$

Where;

$$\text{DIFF} = M_{\text{ILEC}} - M_{\text{CLEC}}$$

$$M_{\text{ILEC}} = \text{ILEC Average}$$

$$M_{\text{CLEC}} = \text{CLEC Average}$$

$$\sigma_{\text{DIFF}} = \text{SQRT}[\sigma^2_{\text{ILEC}}(1/n_{\text{CLEC}} + 1/n_{\text{ILEC}})]$$

$$\sigma^2_{\text{ILEC}} = \text{Calculated variance for ILEC.}$$

$$n_{\text{ILEC}} = \text{number of observations or samples used in ILEC measurement}$$

$$n_{\text{CLEC}} = \text{number of observations or samples used in CLEC measurement}$$

3.1.2 For Measurement results that are expressed as Percentages or Proportions:

Step 1:

$$p = \frac{(n_{\text{ILEC}}P_{\text{ILEC}} + n_{\text{CLEC}}P_{\text{CLEC}})}{n_{\text{ILEC}} + n_{\text{CLEC}}}$$

Step 2:

$$\sigma_{P_{\text{ILEC}}-P_{\text{CLEC}}} = \text{sqrt} \text{SQRT} [[p(1-p)]/n_{\text{ILEC}} + [p(1-p)]/n_{\text{CLEC}}]$$

Step 3:

$$Z = (P_{\text{ILEC}} - P_{\text{CLEC}}) / \sigma_{P_{\text{ILEC}}-P_{\text{CLEC}}}$$

Where: n = Number of Observations

P = Percentage or Proportion

3.1.3 For Measurement results that are expressed as Rates or Ratios:

$$Z = (\text{DIFF})/\sigma_{\text{DIFF}}$$

Where;

$$\text{DIFF} = R_{\text{ILEC}} - R_{\text{CLEC}}$$

$$R_{\text{ILEC}} = \text{num}_{\text{ILEC}}/\text{denom}_{\text{ILEC}}$$

$$R_{\text{CLEC}} = \text{num}_{\text{CLEC}}/\text{denom}_{\text{CLEC}}$$

$$\sigma_{\text{DIFF}} = \text{SQRT} \{[(\text{num}_{\text{ILEC}} + \text{num}_{\text{CLEC}})/(\text{denom}_{\text{ILEC}} + \text{denom}_{\text{CLEC}})] * (1/\text{denom}_{\text{CLEC}} + 1/\text{denom}_{\text{ILEC}})\}$$

3.1.4 In calculating the difference between the performances, the formulas proposed defined above applies when a larger CLEC value indicates a higher quality of performance. In cases where a smaller CLEC value indicates a higher quality of performance the order of subtraction should be reversed (i.e., $M_{\text{CLEC}} - M_{\text{ILEC}}$, $P_{\text{CLEC}} - P_{\text{ILEC}}$, and $R_{\text{CLEC}} - R_{\text{ILEC}}$).

3.1.5 The proposed Z-tests are applicable to reported measurements that contain 30 or more data points. The Z-test is not applied to measures with benchmark standards.

3.1.6 The minimum sample size for Tier 2 is 10 observations for the aggregate of all CLECs. Sub-measures in Tier 2 with fewer than 10 observations do not have statistical tests conducted on them.

3.2 Small Sample Parity Test

For Tier 1 parity tests with less than 30 observations, AmeritechSBC Ameritech will, in most circumstances, use the permutation tests outlined below. In the limited circumstances where AmeritechSBC Ameritech does not have access to the underlying transaction-by-transaction data required for the permutation test, AmeritechSBC Ameritech will apply the Z test as described in Section 3.1.

3.2.1 Permutation Tests

Type I error: $\alpha = 52.5\%$,

Z-Critical: $Z^c = 1.6451.960$.

The performance is non-compliant with the parity requirement if and only if $Z > Z^c$, where permutation Z values for different types of performance measurements are calculated as defined below.

For Percentages, the Fisher Exact Permutation Test will be used (See Business Rules).

For Averages and Ratios, the following Permutation analysis will be applied to calculate the z-statistic using the following logic:

- (1) Choose a sufficiently large number T.
- (2) Pool and mix the CLEC and ILEC data sets
- (3) Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC data set (n_{CLEC}) and one reflecting the remaining data points, (which is equal to the size of the original ILEC data set or n_{ILEC}).
- (4) Compute and store the Z-test score (Z_s) for this sample.
- (5) Repeat steps 3 and 4 for the remaining T-1 sample pairs to be analyzed. (If the number of possibilities is less than 1 million, include a programmatic check to prevent drawing the same pair of samples more than once).
- (6) Order the Z_s results computed and stored in step 4 from lowest to highest.
- (7) Compute the Z-test score for the original two data sets and find its rank in the ordering determined in step 6.
- (8) To calculate P, divide the rank of the Z-test score as determined in step 7 by the number of total runs executed. ($P = \text{rank}/T$).
- (9) Using a cumulative standard normal distribution table, find the value Z_A such that the probability (or cumulative area under the standard normal curve) is equal to P calculated in step 8.

Compare Z value with the critical z value (Z^c). If $Z > Z^c$, then the performance is non-compliant.

3.2.2 In calculating the difference between the performances, the formulas proposed defined above apply when a larger CLEC value indicates a higher quality of performance. In cases where a smaller CLEC value indicates a higher quality of performance the order of subtraction should be reversed (i.e., $M_{CLEC} - M_{ILEC}$, and $R_{CLEC} - R_{ILEC}$).

3.2.3 AmeritechSBC Ameritech and CLECs will provide software and technical support as needed by Commission Staff for purposes of utilizing the permutation analysis. Any CLEC who opts into this plan agrees to share in providing such support to the Commission Staff.

4.0 Non-statistical Benchmark Testing

For purposes of this document, performance for the CLEC on a particular sub-measure (disaggregated level) will be considered in compliance with the benchmark requirement when the measured results in a single month (whether in the form of means or percentages) for the same sub-measurement, at equivalent disaggregation, for CLEC are used to calculate a Z value and the resulting value is no greater than the critical Z value (Z^c) as defined below.

4.1 Z-Critical: $Z^c = 0$.

Performance is non-compliant with the benchmark requirement if and only if $Z > Z^c$, where benchmark Z values for different types of performance measurements are defined as below.

4.1.1 For Measurement results that are expressed as Averages or Means:

$$\text{Benchmark } Z = B - M_{\text{CLEC}},$$

where;

B = Benchmark Average or Mean,

M_{CLEC} = CLEC Average.

4.1.2 For Measurement results expressed as Percentages or Proportions:

$$\text{Benchmark } Z = 100(B - P_{\text{CLEC}})$$

where;

B = Benchmark Percentage or Proportion,

P_{CLEC} = CLEC Percentage or Proportion.

4.1.3 In calculating the difference between the performances, the formulas proposed defined above applies when a larger CLEC value indicates a higher quality of performance. In cases where a smaller CLEC value indicates a higher quality of performance the order of subtraction should be reversed (i.e., $M_{\text{CLEC}} - B$ and $P_{\text{CLEC}} - B$).

5.0 Overview of Enforcement Structure

5.1 AmeritechSBC Ameritech agrees with the following methodology for developing the assessment structure for Tier-1 liquidated damages and Tier-2 assessments:

5.2 AmeritechSBC Ameritech will pay liquidated damages to the CLEC, according to the terms set forth in this document, in the form of bill credit or a check or other form of cash (as decided by the CLEC), in full, within 30 days following the reporting of a failed performance measure. Interest on any payments due and owing shall commence on the 31st day of non-payment, at the interest rate of prime plus one.

- 5.3 In order to receive payment by check or other form of cash CLEC must complete the CLEC Identification and Liquidated Damages Information Form located on the CLEC OnLine website (<https://elec.sbc.com/clec>). Otherwise, remedy payment will be made via bill credit.
- 5.43 Liquidated damages apply to Tier 1 measurements identified as "Remedied" in the Measurement Type section of the performance measurement business rules documented in ~~Payments made apply to Tier 1 measurements identified as High, Medium, or Low on~~ Appendix 1.
- 5.54 ~~Assessments are applicable to Tier-2 measures identified as "Remedied" in the Measurement Type section of the performance measurement business rules documented in High, Medium, or Low on~~ Appendix 1 and are payable to the ~~Illinois-Indiana State Treasury.~~
- 5.65 A CLEC wishing to be subject to Ameritech's Ameritech Indiana's Performance Remedy Plan ~~tariffed with the Illinois Commerce Commission must notify SBC/Ameritech (pursuant to the "Notice" provision in that CLEC's interconnection agreement with Ameritech Indiana, with a copy to Ameritech Indiana's Regulatory Offices) and the Commission, in writing, of its intent to "opt-in" the Remedy Plan. Notice to Ameritech shall be made, in the cases in which a CLEC purchases out of the tariffed plan, at the place of notice designated by Ameritech in the tariff. In the cases in which a CLEC opts-in to the Plan through an Interconnection Agreement, notice shall be made to Ameritech's regulatory offices. The CLEC's "opt-in" becomes effective 20 days from the date of filing said written notice with the Commission, and it supersedes the Plan previously in effect for that CLEC. Payments Remedies shall be calculated in accordance with the Remedy Plan beginning with the first full calendar month following the effective date of the "opt-in". Voluntarily negotiated amendments also must be filed with the Commission, although such amendments are subject to Commission approval.~~
- 5.7 SBC Ameritech will be liable for the payment of Tier 2 assessments upon formal approval of this plan by the Commission in either a generic proceeding or by approving an Interconnection Agreement amendment referencing this plan. Tier 2 assessments will be effective with the first full month of performance results after Commission approval of this plan. Tier 2 assessments will be paid on the aggregate performance for all CLECs that are operating in Indiana, unless the CLEC has a payment plan that is not comparable to that in Tier 1 of this Performance Remedy Plan. For purposes of this paragraph, a payment plan that is not comparable to that in Tier 1 of this document is a plan that provides for a separate set of payments relating to performance on specified competition-affecting measures, over and above (or without) liquidated damages payments that are calculated in a fashion analogous to the method of calculation used in Tier 1 of this plan. SBC Ameritech agrees that all payment plans in interconnection agreements approved by

the Commission as of the date of Commission approval of this Remedy Plan are comparable to Tier 1 of this document under this standard.

6.0 Procedural Safeguards and Exclusions

- 6.1 ~~AmeritechSBC~~ Ameritech agrees that the application of the assessments and damages~~payment made~~, as provided for herein, is not intended to foreclose other non-contractual legal and regulatory claims and remedies that may be available to a CLEC. By incorporating these liquidated damages terms regarding ~~payment into an interconnection agreement~~, ~~AmeritechSBC~~ Ameritech and CLEC agree that proof of damages from any “noncompliant” performance measure would be difficult to ascertain and, therefore, ~~the payments made pursuant to the Plan~~liquidated damages are a reasonable approximation of any contractual damage resulting from a non-compliant performance measure. ~~AmeritechSBC~~ Ameritech and CLEC further agree that payments liquidated damages payable ~~made to the CLEC~~ under this provision are not intended to be a penalty.
- 6.2 ~~AmeritechSBC~~ Ameritech’s agreement to implement these enforcement terms, and specifically its agreement to ~~make payments~~pay any liquidated damages or assessments pursuant to ~~the~~this Remedy Plan to CLEC or to the state of ~~Illinois~~Indiana, hereunder, will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating to the same performance. ~~AmeritechSBC~~ Ameritech and CLEC agree that CLEC may not use: (1) the existence of this enforcement plan; or (2) ~~AmeritechSBC~~ Ameritech’s payment of Tier-1 payments~~liquidated damages or Tier-2 paymentsassessments~~ as evidence that ~~AmeritechSBC~~ Ameritech has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any state or federal law or regulation. ~~AmeritechSBC~~ Ameritech’s conduct underlying its performance measures, and the performance data provided under the performance measures, however, are not made inadmissible by these terms. Any CLEC accepting this Remedy Plan agrees that ~~AmeritechSBC~~ Ameritech’s performance with respect to this Remedy Plan may not be used as an admission of liability or culpability for a violation of any state or federal law or regulation. Further, any liquidated damages payment made by ~~AmeritechSBC~~ Ameritech under these provisions is not hereby made inadmissible in any proceeding relating to the same conduct where ~~AmeritechSBC~~ Ameritech seeks to offset the payment against any other damages a CLEC might recover; whether or not the nature of damages sought by the CLEC is such that an offset is appropriate will be determined in the related proceeding. The terms of this paragraph do not apply to any proceeding before the Commission or the FCC to determine whether ~~AmeritechSBC~~ Ameritech has met or continues to meet the requirements of Section 271.
- 6.3 ~~SBC~~ Ameritech shall not be liable for both Tier 2 “assessments” and any other assessments or sanctions under the Commission’s service quality rules relating to the same performance.

- 6.43 Every six months, CLEC may participate with ~~AmeritechSBC~~ Ameritech, other CLECs, and Commission representatives to review the performance measures to determine (a) whether measurements should be added, deleted, or modified; (b) whether the applicable benchmark standards should be modified or replaced by parity standards, or vice versa; and (c) whether to move a classification of a measure, either Tier 1, Tier 2 or both, from Remedied to Diagnostic, or vice versa. ~~to High, Medium, Low, Diagnostic, Tier 1 or Tier 2.~~ The criteria for reclassification of a measure shall be whether the actual volume of data points was lesser or greater than anticipated, or whether the service is nascent, ~~or any other evidence establishing that the performance measure at issue is significantly inaccurate or changed from that reflected in the current Remedy Plan.~~ Criteria for review of performance measures, other than for possible reclassification, shall be whether there exists an omission or failure, to capture intended performance, and whether there is duplication of another measurement. ~~Performance measures for 911 may be examined at any six-month review to determine whether they should be reclassified.~~ Any changes to existing performance measures and this remedy plan shall be by mutual agreement of the parties and, if necessary, with respect to new measures and their appropriate classification, by Commission arbitration. The current measurements and benchmarks will be in effect until modified hereunder through this review process or expiration of the interconnection agreement.
- 6.54 CLEC and ~~AmeritechSBC~~ Ameritech shall consult with one another and attempt in good faith to resolve any issues regarding the accuracy or integrity of data collected, generated, and reported pursuant to this document. In the event that CLEC requests such consultation and the issues raised by CLEC have not been resolved within 45 days after CLEC's request for consultation, then SBC Ameritech will allow CLEC to have an independent audit conducted, at CLEC's expense, of SBC Ameritech's performance measurement data collection, computing, and reporting processes limited to the specific performance measurements in question. CLEC and SBC Ameritech must agree on the auditor chosen to conduct the audit. Inability of the parties to agree on the auditor to be chosen will be resolved through an expedited dispute resolution pursuant to Indiana Utilities Regulatory Commission Procedural Rules. In the event the subsequent audit affirms a material impact resulting from the issue raised by the CLEC, or if a different material problem is identified, SBC Ameritech shall reimburse the CLEC any expense incurred by the CLEC for such audit. SBC Ameritech is deemed to be materially at fault when a reported successful measure changes as a consequence of the audit to a missed measure. Each party to the mini-audit shall bear its own internal costs, regardless of which party ultimately bears the cost of the third-party auditor. CLEC may not request more than one audit per six calendar months under this section, and may not request an audit of the same performance measurement more than once in a twelve calendar month period. This section does not modify CLEC's audit rights under other provisions of this Agreement or any applicable Commission Order. SBC Ameritech agrees to inform all CLECs of any problem identified during an audit initiated by any CLEC.

6.54.1 Annual Periodic Audit

SBC Ameritech agrees to periodic, regional (five-state) audit of the performance measurement data collection, transformation, result and remedy calculation, and result publication processes and systems. The first regional audit shall commence the later of eighteen months after this plan becomes effective or eighteen months after completion of the performances measurements audit of the OSS Third Party Test under Cause No. 41657. Subsequent to that initial audit, additional periodic audits will be scheduled as deemed necessary by the Commission. CLECs and the Commission will have input into the design and schedule of the audit. An independent, third party auditor retained by SBC Ameritech and approved by the Commission will conduct these audits at SBC Ameritech's expense. ~~Ameritech will participate in a comprehensive annual audit of its reporting procedures and reportable data. Ameritech will include all systems, processes and procedures associated with the production and reporting of performance measurement results. A third-party auditor will perform this audit. Ameritech and the CLECs will jointly select the third-party auditor. If the parties cannot agree on the auditor, the auditors selected by each party will jointly determine the auditor. Costs for these annual audits will be fully borne by Ameritech.~~

~~The comprehensive Annual Audits will be conducted every twelve (12) months, with the first such audit commencing twelve (12) months after the conclusion of the KPMG LSS Test's metric replication. Upon completion, Ameritech shall submit its annual comprehensive audit to the Commission and the CLECs participating in this Remedy Plan.~~

6.4.2 Mini-Audits

~~In addition to an annual audit, CLEC may request mini-audits of individual performance measures/submeasures during the year. When a CLEC has reason to believe the data collected for a measure are flawed or the reporting criteria for the measure are not being adhered to, it can request that a mini-audit be performed on the specific measure/submeasure upon written request, which will include the designation of a CLEC representative to engage in discussions with Ameritech about the requested mini-audit. If, thirty (30) days after the CLEC's written request, the CLEC believes that the issue has not been resolved to its satisfaction, the CLEC can commence the mini-audit, after providing Ameritech with written notice five (5) days in advance. Each CLEC is limited to auditing three (3) single measures/submeasures during the audit year. The audit year shall commence with the start of the KPMG OSS test. **Mini-audits may not be performed, conducted or requested while the OSS third-party test, or an Annual Audit is being conducted.**~~

~~Mini-audits will be of all systems, processes and procedures associated with the production and reporting of performance measurement results for the audited measure/submeasure. Mini-audits will include two (2) months of data, and all parties agree that raw data supporting the performance measurement results will be made available, on a monthly basis, to the CLEC's.~~

~~A third-party auditor, selected by the same method as described above, will conduct the mini-audits. The responsibility for paying the costs of such audits shall be wholly dependent upon the result of the audit. A CLEC initiating a mini-audit that finds no culpability or misfeasance on Ameritech's part shall be fully responsible for bearing the cost of the mini-audit. In those instances where a CLEC requests a mini-audit which results in a finding that Ameritech has materially misreported or misrepresented data, or, Ameritech is found to have non-compliant procedures, Ameritech should bear responsibility for full payment of the costs of the mini-audit. Ameritech is deemed to be materially at fault when a reported successful measure changes as a consequence of the audit to a missed measure, or, when there is an increase in the ranking of the measure as a result of the audit, i.e., from low to medium or from medium to high, as a result of a material misreport or misrepresentation. Each party to the mini-audit shall bear its own internal costs, regardless of which party ultimately bears the cost of the third-party auditor.~~

~~Each mini-audit shall be submitted to the CLEC involved and to the Commission as a proprietary document. Ameritech will notify all CLEC's of any mini-audit requests, on a monthly basis, within forty-five (45) days of the date of a mini-audit request.~~

~~All written notices pursuant to this provision include e-mail.~~

7.0 Exclusions Limited

- 7.1 ~~AmeritechSBC~~ Ameritech shall not be obligated to pay liquidated damages or assessments for noncompliance with a performance measurement, if, but only to the extent that, such noncompliance could not have been avoided by ~~AmeritechSBC~~ Ameritech in the exercise of due diligence. ~~AmeritechSBC~~ Ameritech shall not be excused from payment of liquidated damages or assessments on any other grounds, except by application of the procedural threshold below. Any dispute regarding whether ~~AmeritechSBC~~ Ameritech's performance failure is excused under this paragraph shall be resolved with the Commission through a dispute resolution proceeding under the Commission's Procedural Rules, or, if the parties consent, through commercial arbitration with the ~~Ameritech~~ American Arbitration Association. ~~AmeritechSBC~~ Ameritech shall have the burden of proof in any such proceeding to demonstrate that its noncompliance

with the performance measurement should be excused because it could not have been avoided by AmeritechSBC Ameritech could not have avoided it in the exercise of reasonable diligence. Section 7.1 only suspends AmeritechSBC Ameritech's ability to timely perform an activity subject to performance measurement; the applicable time frame in which AmeritechSBC Ameritech's compliance with the parity or benchmark criterion is measured shall be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the excusing event. Upon commencement of the dispute resolution proceeding set forth above, AmeritechSBC Ameritech shall place the payments—liquidated damages and/or assessments in dispute in an interest-bearing escrow, to be held by a neutral third party. The outcome of the dispute resolution shall determine which party to that proceeding is entitled to the funds held in escrow, and the interest on those funds.

- 7.23 AmeritechSBC Ameritech and CLEC agree that there is an aggregate annual cap of 36% of Ameritech Indiana's net incomeNet Return, which serves as a threshold for certain other events, and does not act as a ceiling on any payments by AmeritechSBC Ameritech. The annual cap amounts will be determined by SBC Ameritech the Illinois Commerce Commission, pursuant to an annually commenced docket, based on the formula of 36% of Ameritech Indiana's net return as is set forth at ¶ 436 and footnote 1332 of the FCC's December 22, 1999 Memorandum Opinion and Order in CC Docket No. 99-295. The annual cap shall be re-calculated on the first business day of the calendar year that updated ARMIS data is made publicly available. For purposes of applying the cap, the calendar year shall apply.

Once the annual cap threshold is established, ~~an~~ aggregate maximum monthly cap will be determined by dividing the amount of the annual cap by twelve. CLEC acknowledges that a maximum monthly threshold of one-twelfth of the annual threshold for Tier 1 liquidated damages and Tier 2 assessments will apply to all performance payments made by SBC Ameritech under all Ameritech Indiana interconnection agreements. A monthly cap of \$60.24 million (\$361.45 million ÷ 6) for Tier 1 payments, serves as a threshold for certain other events, and does not act as a ceiling on the aggregate monthly payments made by Ameritech.

- 7.23.1 Whenever AmeritechSBC Ameritech makes Tier-1 liquidated damages payments to an individual CLEC in a given month which exceed 12.5% of the monthly cap amount\$3.76 million, or the aggregate Tier-1 liquidated damages payments to all CLECs in a given month exceed the monthly cap, AmeritechSBC Ameritech may commence a show cause proceeding as provided for below. Upon timely commencement of the show cause proceeding, AmeritechSBC Ameritech must pay the balance of monies—liquidated damages owed in excess of the threshold amount into an interest-bearing escrow, to be held by a neutral third-party, pending the outcome of the show cause proceeding. To invoke these escrow provisions, AmeritechSBC Ameritech must file with the Commission, not later

than the due date of the affected damages payments, an application to show cause why it should not be required to pay any amount in excess of the procedural threshold. AmeritechSBC Ameritech's petition shall be in the nature of an expedited dispute resolution under this paragraph pursuant to Illinois Commerce CommissionIndiana Utility Regulatory Commission Procedural Rules. AmeritechSBC Ameritech will have the burden of proof to demonstrate why, under the circumstances, it would be unjust to require it to make paymentspay liquidated damages in excess of the applicable threshold amount.

If AmeritechSBC Ameritech reports non-compliant performance to a CLEC for three consecutive months on 20% or more of the measures reported to the CLEC, but AmeritechSBC Ameritech has incurred no more than 4.2% of the monthly threshold amount in liquidated damages obligations \$1.25 million in payments to the CLEC for that period under the enforcement terms set out here, then the CLEC may commence an expedited dispute resolution under this paragraph pursuant to Indiana Utility Regulatory Commission Illinois Commerce Commission Procedural Rules. In any such proceeding, the CLEC will have the burden of proof to demonstrate why, under the circumstances, justice requires AmeritechSBC Ameritech to make payments in excess of the amount calculated under these enforcement terms.

7.23.2 AmeritechSBC Ameritech should post on its Internet website the aggregate payments of any Tier 1 liquidated damages payments or Tier 2 Assessments.

7.34 With respect to any interconnection agreement, AmeritechSBC Ameritech and any CLEC may request two expedited dispute resolution proceedings pursuant to the two preceding paragraphs before the Commission or, if the parties agree, through commercial arbitration with the American Arbitration Association (AAA); during the term of the contract without having to pay attorneys' fees to the winning company. For the third proceeding and thereafter, the requesting party must pay attorneys' fees, as determined by the Commission or AAA, if that party loses.

7.5 In the event the aggregate total of Tier 1 payments and Tier 2 Assessments under all Ameritech interconnection agreements reaches the annual cap within a given year and Ameritech continues to deliver non-compliant performance during the same year to any CLEC or all CLECs, the Commission may recommend to the FCC that Ameritech should cease offering in-region inter-LATA services to new customers.

7.46 In the event that the aggregate total of Tier 1 liquidated damages payments and Tier 2 Assessments reaches the annual procedural threshold within the first nine months of a given year, the Commission shall commence an expedited investigation to determine, among other things, (1) whether further remedy payments are warranted, (2) whether the penalties need to be lowered under the particular circumstances, (3) whether the structure

of the payments needs to be reexamined to more accurately reflect performance when payments appear excessive in view of the performance level provided, (4) or other issues raised by SBC Ameritech, the Commission or CLECs, whether further payment/Assessment is/are warranted; whether the payment and/or Assessment amounts should be higher under the particular circumstances; why Ameritech's performance was substandard, or other issues.

7.57 Whenever Commission proceedings are initiated by any party, or by the Commission, any payments liquidated damages or a Assessments that become due and owing, including penalties that are the subject of the Commission proceedings, shall be deposited by AmeritechSBC Ameritech into an interest-bearing escrow, to be held by neutral third-parties, during the pendency of the Commission proceedings. In addition to the issues that are the subject of the Commission proceedings, if appropriate, the Commission shall determine whether the CLEC(s) and/or the State are entitled to the funds held in escrow, and, what parties should receive the interest. Except as is determined by the Commission in the preceding sentence, all parties are to bear their own litigation costs and expenses.

7.6 Regardless of specific thresholds and resulting actions addressed above, Ameritech Indiana's Tier 1 liquidated damages remedy liability to any individual CLEC in any month will not exceed (will be capped at) the total billed revenue due Ameritech Indiana for services provided to the CLEC in the same month for which the remedy liability was incurred.

8.0 Tier-1 Damages Payable to CLECs

Tier-1 payments liquidated damages apply to measures designated in Appendix 1 as High Remedied, Medium, or Low when Ameritech Indiana delivers "non-compliant" performance as defined in Sections 3 and 4 above.

8.1 Payments Liquidated damages in the amount specified in TABLE 1: Per Occurrence Liquidated Damage Amount Index Table the table below apply to all "non-compliant" sub-measures subject to remedies. Payments Liquidated damages are calculated on a per occurrence basis, using the amount per occurrence taken from the table Table 1 below, based on the designation of the measures as High, Medium, or Low in Appendix 1 and the number of consecutive months for which AmeritechSBC Ameritech has reported noncompliance for the sub-measure and on the overall percentage of sub-measures subject to remedies for which Ameritech Indiana met or exceeded the performance standard. For those measures listed on Appendix 3 as "Measurements That Aare Ssubject to Pper Ooccurrence Ddamages or Aassessments Wwith a Ceap," the amount of payments liquidated damages in a single month for a disaggregation category shall not exceed the amount listed in TABLE 2: Per Measure/Cap Liquidated Damage Amount Index Table the table below for the "Per measurement" category. For those measures listed on Appendix 3 as "Measurements That Aare Ssubject to Pper Mmeasure

“Damages or Assessments,” payments—liquidated damages are calculated on a per disaggregation category basis, at the amounts set forth in the table below Table 2. The methodology for determining the number of occurrences is addressed in “Methods of Calculating the Payment and Assessment Amounts” below.

- 8.2 TABLE 1 and TABLE 2 utilize an Index Value (“IV”) that establishes the level of liquidated damages assessment to be paid in the case of a failure to meet or exceed a performance standard. The IV is calculated by (1) determining the number of reported sub-measure results subject to remedies for which performance met or exceeded the standard of comparison; (2) determining the total number of reported sub-measures subject to remedies; and (3) dividing (1) by (2) and multiplying by 100.

$$IV = (RSM_{passed} \div RSM_{total}) \times 100$$

Where

RSM_{passed} = Number of Remedied Sub-Measures results where performance met or exceeded the standard of comparison
 RSM_{total} = Total count of Remedied Sub-Measure results

- 8.4 For measures defined in Appendix 1 as subject to a Tier 1 performance ceiling and a Tier 1 performance floor, liquidated damages apply as indicated in Section 8.2 whenever the following occurs:
- Performance is below the ceiling performance level and above the floor performance level and not in parity; or
 - Performance is below the floor performance level, whether or not in parity.

Performance above the ceiling performance standard is deemed to have met the performance standard regardless of the result of a parity comparison. When performance for the CLEC is below the floor, liquidated damages will be calculated against the better of the floor level of performance or the parity comparison performance.

- 8.5 Following at least two consecutive months of non-compliance for a given sub-measure, liquidated damages will be subject to a “proof of compliance” period for that individual metric. This process will require Ameritech Indiana to return to compliance for a specified number of months, based on the number of consecutive months non-compliant performance, before the liquidated damages amount is reduced to the lowest, or single month of non-compliance, level. For example, if Ameritech Indiana was out of compliance for four consecutive months for a given performance measurement reported for a specific CLEC, Ameritech Indiana will have to provide this CLEC three consecutive months of compliant performance for this same sub-measure before it can begin paying the “Month 1” liquidated damage amount.

- 8.6 During this “proof of compliance” period, Ameritech Indiana will make liquidated damages payments only for those months during which the performance result for a specific sub-measure is determined to be “non-compliant” for a CLEC. This remedy payment amount will return to the lowest level of payment when Ameritech Indiana provides “compliant” performance for the number of consecutive months identified in TABLE 4: “Step-Down” Table Of Liquidated Damages For Tier 1 Measures where the payment amount is “Month One Amount”.
- 8.7 SBC Ameritech is obligated to correctly and completely report performance results for CLEC and the aggregate of all CLECs. On occasion, it may be necessary for SBC Ameritech to restate previously published performance results to comply with this obligation where the originally published results were materially different from actual performance. SBC Ameritech will provide notice, via the CLEC OnLine web site, to CLEC and the Commission of each restatement, indicating the performance measurements restated, which months’ performance the measurements were restated for, and why the restatement was necessary.
- 8.8 In the event that performance measurement results need to be restated, SBC Ameritech will restate those results as soon as possible for a period not to exceed the six months prior to the month for which results have most recently been reported at time of the restatement.
- 8.9 If it is determined through restatement of performance results or other means that SBC Ameritech underpaid liquidated damages due a CLEC, or assessments due the State, SBC Ameritech will make additional payment/bill credit to the CLEC and/or payments to the State to the extent that it underpaid. All underpayments will be credited with interest. Beginning with first month of performance results subject to this Remedy Plan, in the event that determination is made through restatement of performance results or other means that SBC Ameritech overpaid liquidated damages and/or assessments, future payment/bill credit to CLECs and/or future payments to the State will be offset by the amount of overage.
- 8.10 SBC Ameritech shall be able to apply any credits due to restatements of performance data (i.e., where the amount of Tier 1 liquidated damages applicable to originally stated data exceeds the recalculated liquidated damages applicable to restated performance data) toward those charges that the CLEC owes SBC Ameritech for services rendered (or facilities provided) so long as such charges are undisputed and are past due for not less than 90 days.
- 8.11 If performance for any sub-measure fails to meet the standard of performance (parity or benchmark) defined in Appendix One for three consecutive months, SBC Ameritech will, at request of the CLEC, initiate a “gap closure” effort. The “gap closure” effort will (1) identify the root cause for the failure to meet the performance standard, and (2) develop

an action plan to improve performance to a level where it is meeting the standard of performance. Documentation of the root cause and the action plan to address it will be provided to the CLEC requesting “gap closure”.

TABLE 1: Per Occurrence Liquidated Damage Amount Index Table						
Index Value ("IV")	Consecutive Months Missed					
	One	Two	Three	Four	Five	Six or More
IV >= 92.0%	\$25	\$50	\$100	\$200	\$300	\$400
86.0% <= IV < 92.0%	\$35	\$60	\$125	\$250	\$350	\$450
80.0% <= IV < 86.0%	\$50	\$75	\$150	\$300	\$400	\$500
74.0% <= IV < 80.0%	\$100	\$125	\$250	\$500	\$600	\$700
IV < 74%	\$150	\$175	\$350	\$700	\$800	\$900

TABLE 2: Per Measure/Cap Liquidated Damage Amount Index Table						
Index Value ("IV")	Consecutive Months Missed					
	One	Two	Three	Four	Five	Six or More
IV >= 92.0%	\$5,000	\$10,000	\$15,000	\$20,000	\$25,000	\$30,000
86.0% <= IV < 92.0%	\$7,500	\$15,000	\$22,500	\$30,000	\$37,500	\$45,000
80.0% <= IV < 86.0%	\$10,000	\$20,000	\$30,000	\$40,000	\$50,000	\$60,000
74.0% <= IV < 80.0%	\$15,000	\$30,000	\$45,000	\$60,000	\$75,000	\$90,000
IV < 74%	\$25,000	\$50,000	\$75,000	\$100,000	\$125,000	\$150,000

TABLE 3: Assessment Amounts For Tier 2 Measures	
Per Occurrence	\$200
Per Measure / Cap	\$20,000

TABLE 4: "Step-Down" Table Of Liquidated Damages For Tier 1 Measures				
Consecutive Months Compliant Performance Before Subsequent Non-Compliant Month	Consecutive Months Non-Compliant Performance Prior to First Month of Compliant Performance			
	Three Months	Four Months	Five Months	Six Months or More
Per Occurrence and Per Measure/Cap				
One Month	Month Two Amount	Month Three Amount	Month Four Amount	Month Five Amount
Two Months	Month One Amount	Month Two Amount	Month Two Amount	Month Three Amount
Three Months or More	Month One Amount	Month One Amount	Month One Amount	Month One Amount

PAYMENT TABLE FOR TIER-1 MEASURES

Per occurrence						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month
High	\$300	\$500	\$1000	\$1200	\$1400	\$1600
Medium	\$150	\$300	\$600	\$800	\$1000	\$1200
Low	\$50	\$100	\$200	\$400	\$600	\$800

Per Measure Cap*						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month
High	\$50,000	\$100,000	\$150,000	\$200,000	\$250,000	\$300,000
Medium	\$20,000	\$40,000	\$60,000	\$80,000	\$100,000	\$120,000
Low	\$10,000	\$20,000	\$30,000	\$40,000	\$50,000	\$60,000

ASSESSMENT TABLE FOR TIER-2 MEASURES

Per occurrence	
Measurement Group	
High	\$1000
Medium	\$600
Low	\$400

Per Measure Cap*	
Measurement Group	
High	\$150,000
Medium	\$60,000
Low	\$40,000

*— For per occurrence with cap measures, the occurrence value is taken from the per occurrence table, subject to the per measure with cap amount.

9.0 Tier-2 Assessments to the State:

- 9.1 Assessments payable to the Illinois-Indiana State Treasury apply to the Tier-2 measures designated in Appendix 1 as High, Medium, or Low "Remedied" when Ameritech Indiana and/or its Affiliate performance (whichever is better, provided the affiliate data points exceed 30) is out of parity or does not meet the benchmarks for the aggregate of all CLEC data. Specifically, if the Z-test value is greater than the Critical Z, the performance for the reporting category is out of parity or below standard. Assessments will be paid when the aggregate of all CLECs has at least 10 observations.
- 9.2 For those measurements where a per-occurrence assessment applies, an Assessment as specified in TABLE 3: Assessment Amounts for Tier 2 Measures shown above the Assessment Table for each occurrence is payable into the Illinois-Indiana State Treasury for each sub-measure that exceeds the Critical Z-value, for three consecutive months. For those Measurements listed in Appendix 3 as measurements subject to per occurrence with a cap, an assessment as shown in the Assessment Table Table 3 above for each occurrence with the applicable cap is payable into the Illinois-Indiana State Treasury for each sub-measure that exceeds the Critical Z-value, for three consecutive months. For those Tier-2 Measurements listed in Appendix 3 as subject to a per measurement assessment, an assessment amount as shown in the Assessment Table Table 3 above is payable into the Illinois-Indiana State Treasury for each sub-measure that exceeds the Critical Z-value, for three consecutive months.
- 9.3 The critical Z-value is defined in Sections 3.1 and 4.1 above.

10.0 General Assessments:

- 10.1 If AmeritechSBC Ameritech fails to submit performance reports by the 20th last business day of the month following actual performance, the following assessments apply unless excused for good cause by the Commission:
- If no reports are filed, \$5,000 per day past due;
If incomplete reports are filed, \$1,000 per day for each performance measurement listed in the User Guide for which results are not posted, but not to exceed \$5,000 per day past due.
~~missing performance result.~~
- 10.2 If AmeritechSBC Ameritech alters previously reported data to a CLEC, and after discussions with AmeritechSBC Ameritech the CLEC disputes such alterations, then the CLEC may ask the Commission to review the submissions and the Commission may take appropriate action. This does not apply to the limitation stated under the section titled "Exclusions Limited."

- 10.3 When Ameritech Indiana's performance creates an obligation to make a payment pay liquidated damages to a CLEC or pay an Assessment to the State under the terms set forth herein, AmeritechSBC Ameritech shall make payment by check, bill credit or other direct payment method in the required amount on or before the last business day of the month in the required amount on or before the 30th day following the due date of the performance measurement report for the month in which the obligation arose (e.g., if Ameritech Indiana's performance through March is such that AmeritechSBC Ameritech owes liquidated damages to a CLEC for March performance, or aAssessments to the State for January – March performance, then those payments will be due the last business day of May-20, the last business day of the month following the month (April) in which results were posted). (In order to receive payment by check CLEC must complete the CLEC identification and liquidated damages Information Form located on the CLEC website.) thirty (30) days after the April 20 due date for reporting March data). For each day after the due date that AmeritechSBC Ameritech fails to pay the required amount, AmeritechSBC Ameritech will pay interest to the CLEC at the maximum rate permitted by law for a past due amount liquidated damages obligation and will pay an additional \$3,000 per day to the IndianaHinois State Treasury for a past due aAssessment.
- 10.4 AmeritechSBC Ameritech may not withhold payments of liquidated damages to a CLEC unless AmeritechSBC Ameritech has commenced dispute resolution proceedings on or before the payment due date, pursuant to one of the provisions in Section 7 of this Document.
- 10.5 CLEC will have access to monthly reports on performance measures and business rules through an Internet website that includes performance results for individual CLECs, the aggregate of all CLECs, and Ameritech Indiana and/or its affiliate.individual CLEC data, aggregate CLEC data, and Ameritech's or its affiliate's data.

11.0 Methods of Calculating the Liquidated Damage and Assessment Amounts
The following methods apply in calculating per occurrence payments liquidated damages and aAssessments:

11.1 Calculating Tier-1 Payments

11.1.1 Measures for Which the Reporting Dimensions are Averages or Means

Step 1: Calculate the average or the mean for the sub-measure for the CLEC that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (For benchmark measures, the

calculated average or mean equals the benchmark standard.—Substitute this value for the value calculated in the previous sentences.)

- Step 2: Calculate the percentage difference between the actual average and the calculated average. For benchmark measures or floors (for measures that have floors and the floor applies to the result), calculate the percentage difference between the actual average and the benchmark or floor. This percentage is capped at 100%.
- Step 3: Multiply the total number of data points by the percentage calculated in the previous step and round this number up to the next integer. Then multiply the result by the per occurrence dollar amount taken from the ~~Tier 1 Payment Table~~ Table 1 above to determine the applicable ~~payment~~ liquidated damages amount for the given month for that sub-measure.

11.1.2 Measures for Which the Reporting Dimensions are Percentages

- Step 1: Calculate the percentage for the sub-measure for the CLEC that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (For benchmark measures, the calculated percentage equals the benchmark standard. Substitute this value for the value calculated in the previous sentences.)
- Step 2: Calculate the difference between the actual percentage for the CLEC and the calculated percentage. For benchmark or floor measures (when the floor applies to the result), calculate the difference between the actual percentage and the benchmark or the floor.
- Step 3: Multiply the total number of data points by the difference in percentage calculated in the previous step and then round this number up to the next integer. Then multiply the result by the per occurrence dollar amount taken from the ~~Tier 1 Payment Table~~ Table 1 above to determine the applicable Tier 1 ~~payment~~ liquidated damages for the given month for that sub-measure.

11.1.3 Measures for Which the Reporting Dimensions are Ratios or Rates.

- Step 1: Calculate the ratio for the sub-measure for the CLEC that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure.
- Step 2: Calculate the difference between the actual ratio for the CLEC and the calculated ratio. For benchmark measures or floors (for measures that have

floors and the floor applies to the result) calculate the difference between the actual ratio and the benchmark or floor. This difference is capped at 100%.

Step 3: Multiply the total number of data points by the percentage calculated in the previous step and then round this number up to the nearest integer. Then multiply the result by the per occurrence dollar amount taken from the Tier 1 Payment Table Table 1 above to determine the applicable Tier 1 payment liquidated damages for the given month for that sub-measure.

11.2 Tier 2 Liquidated Assessments

Determine the Tier-2 measurement results, such as High, Medium, or Low, that are non-compliant for three consecutive months for the aggregate of all CLECs.

If the non-compliant classification continues for three consecutive months, an additional assessment will apply in the third month and in each succeeding month as calculated below, until AmeritechSBC Ameritech reports performance that meets the applicable criterion. That is, Tier-2 assessments will apply on a “rolling three month” basis, one assessment for the average number of occurrences for months 1-3, one assessment for the average number of occurrences for months 2-4, one assessment for the average number of occurrences for months 3-5, and so forth, until satisfactory performance is established.

11.2.1 Measures for Which the Reporting Dimensions are Averages or Means.

Step 1: Calculate the average or the mean for the sub-measure for the aggregate of all CLECs that would yield the Critical Z-value for each of the three non-compliant months. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (For benchmark measures, the calculated average or mean equals the benchmark standard. –Substitute this value for the value calculated in the previous sentences.)

Step 2: Calculate the percentage difference between the actual average and the calculated average for each of the three non-compliant months. For benchmark measures, calculate the percentage difference between the actual average and the benchmark for each of the three non-compliant months. This percentage is capped at 100%.

Step 3: Multiply the total number of data points for each month by the percentage calculated in the previous step. Calculate the average for three months of these numbers rounding up the result to the next highest integer. Then multiply the result by the per occurrence assessment amount in Table 3 above \$1000, \$600, and \$400 for Measures that are designated as High, Medium, and Low respectively to determine the applicable aAssessment payable to the Illinois-Indiana State Treasury for that sub-measure.

11.2.2 Measures for Which the Reporting Dimensions are Percentages.

- Step 1: Calculated the percentage for the sub-measure for the aggregate of all CLECs that would yield the Critical Z-value for each of the three non-compliant months. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (For benchmark measures, the calculated percentage equals the benchmark standard. Substitute this value for the value calculated in the previous sentences.)
- Step 2: Calculate the difference between the actual percentage for the aggregate of all CLECs and the calculated percentage for each of the three non-compliant months. For benchmark measures, calculate the difference between the actual percentage and the benchmark for the three non-compliant months.
- Step 3: Multiply the total number of data points for each month by the difference in percentage calculated in the previous step. Calculate the average for three months of these numbers rounding up the result to the next highest integer. Then multiply the result by the per occurrence assessment amount in Table 3 above ~~\$1000, \$600, and \$400~~ for measures that are designated as High, Medium, and Low respectively to determine the applicable aAssessment for that sub-measure.

11.2.3 Measures for Which the Reporting Dimensions are Ratios or Rates.

- Step 1: Calculate the ratio for the sub-measure for the aggregate of all CLECs that would yield the Critical Z-value for each of the three non-compliant months. Use the same denominator as the one used in calculating the Z-statistic for the sub-measures. (For benchmark measures, calculate the value that would yield parity by adding or subtracting the Critical Z-value to the benchmark as appropriate, subject to 4.0 and the Business Rules.)
- Step 2: Calculate the difference between the actual ratio for the aggregate of all CLECs and the calculated ratio for each month of the non-compliant three-month period. For benchmark measures calculate the difference between the actual ratio and the benchmark for the three non-compliant months. This difference is capped at 100%
- Step 3: Multiply the total number of data points by the percentage calculated in the previous step for each month. Calculated the average for three months of these numbers rounding up the result to the next highest integer. Then multiply the result by the per occurrence assessment amount in Table 3 above ~~\$1000, \$600, and \$400~~ for measures that are designated as High,

Medium, and Low respectively to determine the applicable Assessment for that sub-measure.

12.0 Advanced and Nascent Services

12.1 In order to ensure parity and benchmark performance where CLECs order low volumes of advanced and nascent services, AmeritechSBC Ameritech will make additional voluntary payments into the Illinois-Indiana State Treasury on those measurements listed in §12.2 below (the “Qualifying Measurements”). Such additional voluntary payments will apply only when there are more than 10 and less than 100 observations for a Qualifying Measurement on average statewide for a three-month period with respect to the following order categories (if within a Qualifying Measurement):

- UNE loop and port combinations;
- Resold ISDN;
- ISDN UNE loop and port combinations;
- BRI loop with test access; and
- DSL loops.

12.2 The Qualifying Measurements are as follows:

Provisioning Measurements:

- PMs 29, 45, 58 - Percent Ameritech Caused Missed Due Dates
- PMs 35, 46, 59 - Installation Trouble Reports Within “X” Days
- PMs 27, 43, 56 - Mean Installation Interval
- PMs 32, 49, 62 - Average Delay Days for Ameritech-Caused Missed Due Dates
- PM 55.1 - Average Installation Interval - DSL
- PM 57 - Average Response Time for Loop Qualification Information

Maintenance Measurements:

- PMs 38, 66, 68 - % Missed Repair Commitments
- PMs 41, 53, 69 - % Repeat Reports
- PMs 39, 52, 67 - Mean Time to Restore
- PMs 37, 54, 65 - Trouble Report Rate

12.3 The additional voluntary payments referenced in §12.1 will be made only if Ameritech Indiana fails to provide parity or benchmark service for the above measurements as determined by the use of the Modified Z-test and critical Z-value for either:

- three consecutive months; or

- six months or more in a calendar year.

12.4 The additional voluntary payments will only be calculated on the rolling average of occurrences or measurements, as appropriate, where Ameritech Indiana has failed to provide parity or benchmark performance for three consecutive months. If Ameritech Indiana fails to provide parity or benchmark performance in ~~Illinois~~ for six or more months in a calendar year, the voluntary payments will be calculated as if all such months were missed consecutively.

12.5 If, for the three months that are utilized to calculate the rolling average, there were 100 observations or more on average for the qualifying measurement or sub-measurement, then no additional voluntary payments will be made into the ~~Illinois~~Indiana State Treasury. However, if during this same time frame there either is (i) an average of more than 10 but less than 100 observations for a qualifying sub-measure on a statewide basis, or (ii) an average of more than 10 but less than 100 for a non-qualifying sub-measure within a qualifying measure where the measure's average is more than 10 but less than 100 observations, then ~~AmeritechSBC~~ Ameritech shall calculate the additional payments for advanced and nascent services into the ~~Illinois~~Indiana State Treasury by first applying the normal Tier 2 assessment calculation methodology to that qualifying measurement, and then ~~tripling~~-doubling that amount. The resulting total Tier 2 assessment will be triple the assessment that would have been made absent this section of the Remedy Plan.

12.6 Any payments made hereunder shall be subject to the annual cap set forth in § 7.32.

13.0 Attached hereto, and incorporated herein by reference, are the following Appendices:

Appendix 1: Performance Measurement Business Rules (~~Illinois~~Indiana)

Appendix 2: Performance Measures Subject to Tier-1 and Tier-2 Damages ~~Identified as High, Medium, or Low.~~

Appendix 3: Measurements Subject to Per Occurrence Calculation of Payments or Assessment with a Cap and Measurements Subject to Per Measure Payments or Assessment.

AMERITECH INDIANA PERFORMANCE REMEDY PLAN

This Performance Remedy Plan sets forth the terms and conditions under which Indiana Bell Telephone Company ("Ameritech Indiana" or "SBC Ameritech") will report performance to CLEC and compare that performance to Ameritech Indiana's own performance or its affiliate's performance ("parity"), benchmark criteria, or both, whichever is applicable. This document further provides for enforcement through liquidated damages and assessments.

1.0 SBC Ameritech agrees to provide CLEC a monthly report of performance for the performance measures listed in Appendix 1 – Ameritech Performance Measurement User Guide. SBC Ameritech will collect, analyze, and report performance data for these measures in accordance with the business rules defined in Appendix 1, as approved by the Commission. Both the performance measures and the business rules defined in Appendix 1 are subject to modification in accordance with section 6.4 below regarding six-month reviews. SBC Ameritech further agrees to use the two-tiered enforcement structure for performance measurements provided for in this document. The Commission-approved performance measurements shown in Appendix 1 hereto identify the measurements that belong to Tier-1 (payable to CLECs) or Tier-2 (payable to the State) categories.

1.1 SBC Ameritech will not levy a separate charge for provision of the data to CLEC called for under this document. Upon CLEC's request, data files of CLEC's raw data, or any subset thereof, will be transmitted to CLEC. If CLEC's request is transmitted to SBC Ameritech on or before the last day of the month for which data is sought, SBC Ameritech shall provide the data to CLEC on or before the last day of the following month pursuant to mutually acceptable format, protocol, and transmission media. If CLEC's request is transmitted to SBC Ameritech after the last day of the month for which data is sought, SBC Ameritech shall provide the data to CLEC within 30 days of receipt pursuant to mutually acceptable format, protocol, and transmission media. Notwithstanding other provisions of this Agreement, the Parties agree that such records will be deemed Proprietary Information.

2.0 SBC Ameritech will use a statistical test, namely the "Z-test," for evaluating the difference between two means (Ameritech Indiana retail or its affiliate – whichever is better, provided the number of affiliate data points equals or exceeds 30 – and CLEC) or percentages, or the difference between two ratios for purposes of this document. SBC Ameritech agrees to use the modified Z-tests as outlined below as the statistical tests for the determination of parity when the results for Ameritech Indiana retail or its affiliate (whichever is better, provided the number of affiliate data points equals or exceeds 30) and the CLEC are compared. This statistical test will compare the CLEC performance to the Ameritech Indiana retail performance or the affiliate performance (whichever is better). If the affiliate data has 30 or fewer observations, the comparison will be to Ameritech Indiana's retail performance. The modified Z-tests are applicable if the number of data points are greater than or equal to 30 for a given disaggregation category. In cases where benchmarks are established, the determination of compliance is through

a comparison to the applicable Commission-approved benchmark. For testing compliance for measures for which the number of data points is 29 or less, the use of permutation tests as outlined below may be used. Parity and benchmark tests and the corresponding sample size requirements are summarized in the following Tables.

Table 1: Tier 1 Parity Test

Sample Size	Test	Non-compliant
$\text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} \geq 30$	Z Tests (3.1)	$Z > Z^c$
$\text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} < 30$	Permutation (3.2)	$Z > Z^c$

Table 2: Tier 2 Parity Test

Sample Size	Test	Non-compliant
$\text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} \geq 30$	Z Tests (3.1)	$Z > Z^c$
$30 > \text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} \geq 10$	Permutation (3.2)	$Z > Z^c$
$10 > \text{Min}\{n_{\text{ILEC}}, n_{\text{CLEC}}\} \geq 1$	No Test	N/A

Table 3: Tier 1 Benchmark Test

Sample Size	Test	Non-compliant
$n_{\text{CLEC}} \geq 1$	Non-statistical Test (4.1)	$Z > Z^c$

Table 4: Tier 2 Benchmark Test

Sample Size	Test	Non-compliant
$n_{\text{CLEC}} \geq 10$	Non-statistical Test (4.1)	$Z > Z^c$
$n_{\text{CLEC}} < 10$	No Test	N/A

3.0 Statistical Parity Testing

For purposes of this document, performance for the CLEC on a particular sub-measure (disaggregated level) will be considered in compliance with the parity requirement when the measured results in a single month (whether in the form of means, percents, or ratios) for the same sub-measurement, at equivalent disaggregation, for both Ameritech Indiana and/or its affiliate (whichever is better, provided the number of affiliate data points exceeds 30) and CLEC are used to calculate a Z-test statistic and the resulting value is no greater than the critical Z value ("Z^c") that would maintain 97.5% confidence that the difference in results reflects disparity. That Critical-Z value is 1.960.

3.1 Z Test:

Type I Error: $\alpha = 2.5\%$,
Z-Critical: $Z^c = 1.960$.

Performance is non-compliant with the parity requirement if and only if $Z > Z^c$, where Z values for different types of performance measurements are calculated as defined below.

3.1.1 For Measurement results that are expressed as Averages or Means:

$$\text{Modified } Z = (\text{DIFF})/\sigma_{\text{DIFF}}$$

Where;

$$\text{DIFF} = M_{\text{ILEC}} - M_{\text{CLEC}}$$

$$M_{\text{ILEC}} = \text{ILEC Average}$$

$$M_{\text{CLEC}} = \text{CLEC Average}$$

$$\sigma_{\text{DIFF}} = \text{SQRT}[\sigma^2_{\text{ILEC}}(1/n_{\text{CLEC}} + 1/n_{\text{ILEC}})]$$

$$\sigma^2_{\text{ILEC}} = \text{Calculated variance for ILEC.}$$

$$n_{\text{ILEC}} = \text{number of observations or samples used in ILEC measurement}$$

$$n_{\text{CLEC}} = \text{number of observations or samples used in CLEC measurement}$$

3.1.2 For Measurement results that are expressed as Percentages or Proportions:

Step 1:

$$\rho = \frac{(n_{\text{ILEC}}P_{\text{ILEC}} + n_{\text{CLEC}}P_{\text{CLEC}})}{n_{\text{ILEC}} + n_{\text{clec}}}$$

Step 2:

$$\sigma_{\text{PILEC-PCLEC}} = \text{SQRT} [[\rho(1-\rho)]/n_{\text{ILEC}} + [\rho(1-\rho)]/n_{\text{CLEC}}]$$

Step 3:

$$Z = (P_{\text{ILEC}} - P_{\text{CLEC}}) / \sigma_{\text{PILEC-PCLEC}}$$

Where: n = Number of Observations

P = Percentage or Proportion

3.1.3 For Measurement results that are expressed as Rates or Ratios:

$$Z = (\text{DIFF})/\sigma_{\text{DIFF}}$$

Where;

$$\text{DIFF} = R_{\text{ILEC}} - R_{\text{CLEC}}$$

$$R_{\text{ILEC}} = \text{num}_{\text{ILEC}}/\text{denom}_{\text{ILEC}}$$

$$R_{\text{CLEC}} = \text{num}_{\text{CLEC}}/\text{denom}_{\text{CLEC}}$$

$$\sigma_{\text{DIFF}} = \text{SQRT} \{[(\text{num}_{\text{ILEC}} + \text{num}_{\text{CLEC}})/(\text{denom}_{\text{ILEC}} + \text{denom}_{\text{CLEC}})] * (1/\text{denom}_{\text{CLEC}} + 1/\text{denom}_{\text{ILEC}})\}$$

3.1.4 In calculating the difference between the performances, the formulas defined above apply when a larger CLEC value indicates a higher quality of performance. In cases where a smaller CLEC value indicates a higher quality of performance the order of subtraction should be reversed (i.e., $M_{\text{CLEC}} - M_{\text{ILEC}}$, $P_{\text{CLEC}} - P_{\text{ILEC}}$, and $R_{\text{CLEC}} - R_{\text{ILEC}}$).

3.1.5 The proposed Z-tests are applicable to reported measurements that contain 30 or more data points. The Z-test is not applied to measures with benchmark standards.

3.1.6 The minimum sample size for Tier 2 is 10 observations for the aggregate of all CLECs. Sub-measures in Tier 2 with fewer than 10 observations do not have statistical tests conducted on them.

3.2 Small Sample Parity Test

For Tier 1 parity tests with less than 30 observations, SBC Ameritech will, in most circumstances, use the permutation tests outlined below. In the limited circumstances where SBC Ameritech does not have access to the underlying transaction-by-transaction data required for the permutation test, SBC Ameritech will apply the Z test as described in Section 3.1.

3.2.1 Permutation Tests

Type I error: $\alpha = 2.5\%$,

Z-Critical: $Z^c = 1.960$.

The performance is non-compliant with the parity requirement if and only if $Z > Z^c$, where permutation Z values for different types of performance measurements are calculated as defined below.

For Percentages, the Fisher Exact Permutation Test will be used (See Business Rules).

For Averages and Ratios, the following Permutation analysis will be applied to calculate the z-statistic using the following logic:

- (1) Choose a sufficiently large number T.
- (2) Pool and mix the CLEC and ILEC data sets
- (3) Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC data set (n_{CLEC}) and one reflecting the remaining data points, (which is equal to the size of the original ILEC data set or n_{ILEC}).
- (4) Compute and store the Z-test score (Z_s) for this sample.
- (5) Repeat steps 3 and 4 for the remaining T-1 sample pairs to be analyzed. (If the number of possibilities is less than 1 million, include a programmatic check to prevent drawing the same pair of samples more than once).
- (6) Order the Z_s results computed and stored in step 4 from lowest to highest.
- (7) Compute the Z-test score for the original two data sets and find its rank in the ordering determined in step 6.
- (8) To calculate P, divide the rank of the Z-test score as determined in step 7 by the number of total runs executed. ($P = \text{rank}/T$).
- (9) Using a cumulative standard normal distribution table, find the value Z_A such that the probability (or cumulative area under the standard normal curve) is equal to P calculated in step 8.

Compare Z value with the critical z value (Z^c). If $Z > Z^c$, then the performance is non-compliant.

3.2.2 In calculating the difference between the performances, the formulas defined above apply when a larger CLEC value indicates a higher quality of performance. In cases where a smaller CLEC value indicates a higher quality of performance the order of subtraction should be reversed (i.e., $M_{CLEC} - M_{ILEC}$, and $R_{CLEC} - R_{ILEC}$).

3.2.3 SBC Ameritech and CLECs will provide software and technical support as needed by Commission Staff for purposes of utilizing the permutation analysis. Any CLEC who opts into this plan agrees to share in providing such support to the Commission Staff.

4.0 Non-statistical Benchmark Testing

For purposes of this document, performance for the CLEC on a particular sub-measure (disaggregated level) will be considered in compliance with the benchmark requirement when the

measured results in a single month (whether in the form of means or percentages) for the same sub-measurement, at equivalent disaggregation, for CLEC are used to calculate a Z value and the resulting value is no greater than the critical Z value (Z^c) as defined below.

4.1 Z-Critical: $Z^c = 0$.

Performance is non-compliant with the benchmark requirement if and only if $Z > Z^c$, where benchmark Z values for different types of performance measurements are defined as below.

4.1.1 For Measurement results that are expressed as Averages or Means:

$$\text{Benchmark } Z = B - M_{\text{CLEC}},$$

where;

B = Benchmark Average or Mean,

M_{CLEC} = CLEC Average.

4.1.2 For Measurement results expressed as Percentages or Proportions:

$$\text{Benchmark } Z = 100(B - P_{\text{CLEC}})$$

where;

B = Benchmark Percentage or Proportion,

P_{CLEC} = CLEC Percentage or Proportion.

4.1.3 In calculating the difference between the performances, the formulas defined above apply when a larger CLEC value indicates a higher quality of performance. In cases where a smaller CLEC value indicates a higher quality of performance the order of subtraction should be reversed (i.e., $M_{\text{CLEC}} - B$ and $P_{\text{CLEC}} - B$).

5.0 Overview of Enforcement Structure

5.1 SBC Ameritech agrees with the following methodology for developing the assessment structure for Tier-1 liquidated damages and Tier-2 assessments:

5.2 SBC Ameritech will pay liquidated damages to the CLEC according to the terms set forth in this document, in the form of bill credit or a check or other form of cash (as decided by the CLEC), in full, within 30 days following the reporting of a failed performance measure. Interest on any payments due and owing shall commence on the 31st day of non-payment, at the interest rate of prime plus one.

5.3 In order to receive payment by check or other form of cash CLEC must complete the CLEC Identification and Liquidated Damages Information Form located on the CLEC OnLine website (<https://clec.sbc.com/clec>). Otherwise, remedy payment will be made via bill credit.

- 5.4 Liquidated damages apply to Tier 1 measurements identified as "Remedied" in the Measurement Type section of the performance measurement business rules documented in Appendix 1.
- 5.5 Assessments are applicable to Tier-2 measures identified as "Remedied" in the Measurement Type section of the performance measurement business rules documented in Appendix 1 and are payable to the Indiana State Treasury.
- 5.6 A CLEC wishing to be subject to Ameritech Indiana's Performance Remedy Plan must notify SBC/Ameritech (pursuant to the "Notice" provision in that CLEC's interconnection agreement with Ameritech Indiana, with a copy to Ameritech Indiana's Regulatory Offices) and the Commission, in writing, of its intent to "opt-in" the Remedy Plan. The CLEC's "opt-in" becomes effective 20 days from the date of filing said written notice with the Commission, and it supersedes the Plan previously in effect for that CLEC. Remedies shall be calculated in accordance with the Remedy Plan beginning with the first full calendar month following the effective date of the "opt-in". Voluntarily negotiated amendments also must be filed with the Commission, although such amendments are subject to Commission approval.
- 5.7 SBC Ameritech will be liable for the payment of Tier 2 assessments upon formal approval of this plan by the Commission in either a generic proceeding or by approving an Interconnection Agreement amendment referencing this plan. Tier 2 assessments will be effective with the first full month of performance results after Commission approval of this plan. Tier 2 assessments will be paid on the aggregate performance for all CLECs that are operating in Indiana, unless the CLEC has a payment plan that is not comparable to that in Tier 1 of this Performance Remedy Plan. For purposes of this paragraph, a payment plan that is not comparable to that in Tier 1 of this document is a plan that provides for a separate set of payments relating to performance on specified competition-affecting measures, over and above (or without) liquidated damages payments that are calculated in a fashion analogous to the method of calculation used in Tier 1 of this plan. SBC Ameritech agrees that all payment plans in interconnection agreements approved by the Commission as of the date of Commission approval of this Remedy Plan are comparable to Tier 1 of this document under this standard.

6.0 Procedural Safeguards and Exclusions

- 6.1 SBC Ameritech agrees that the application of the assessments and damages, as provided for herein, is not intended to foreclose other non-contractual legal and regulatory claims and remedies that may be available to a CLEC. By incorporating these liquidated damages terms into an interconnection agreement, SBC Ameritech and CLEC agree that proof of damages from any "noncompliant" performance measure would be difficult to ascertain and, liquidated damages are a reasonable approximation of any contractual

damage resulting from a non-compliant performance measure. SBC Ameritech and CLEC further agree that liquidated damages payable under this provision are not intended to be a penalty.

- 6.2 SBC Ameritech's agreement to implement these enforcement terms, and specifically its agreement to pay any liquidated damages or assessments pursuant to this Remedy Plan to CLEC or to the state of Indiana, hereunder, will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating to the same performance. SBC Ameritech and CLEC agree that CLEC may not use: (1) the existence of this enforcement plan; or (2) SBC Ameritech's payment of Tier-1 liquidated damages or Tier-2 assessments as evidence that SBC Ameritech has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any state or federal law or regulation. SBC Ameritech's conduct underlying its performance measures, and the performance data provided under the performance measures, however, are not made inadmissible by these terms. Any CLEC accepting this Remedy Plan agrees that SBC Ameritech's performance with respect to this Remedy Plan may not be used as an admission of liability or culpability for a violation of any state or federal law or regulation. Further, any liquidated damages payment made by SBC Ameritech under these provisions is not hereby made inadmissible in any proceeding relating to the same conduct where SBC Ameritech seeks to offset the payment against any other damages a CLEC might recover; whether or not the nature of damages sought by the CLEC is such that an offset is appropriate will be determined in the related proceeding. The terms of this paragraph do not apply to any proceeding before the Commission or the FCC to determine whether SBC Ameritech has met or continues to meet the requirements of Section 271.
- 6.3 SBC Ameritech shall not be liable for both Tier 2 "assessments" and any other assessments or sanctions under the Commission's service quality rules relating to the same performance.
- 6.4 Every six months, CLEC may participate with SBC Ameritech, other CLECs, and Commission representatives to review the performance measures to determine (a) whether measurements should be added, deleted, or modified; (b) whether the applicable benchmark standards should be modified or replaced by parity standards, or vice versa; and (c) whether to move a classification of a measure, either Tier 1, Tier 2 or both, from Remedied to Diagnostic, or vice versa. The criteria for reclassification of a measure shall be whether the actual volume of data points was lesser or greater than anticipated, or whether the service is nascent.. Criteria for review of performance measures, other than for possible reclassification, shall be whether there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement. Any changes to existing performance measures and this remedy plan shall be by mutual agreement of the parties and, if necessary, with respect to new measures and their appropriate classification, by Commission arbitration. The current measurements and

benchmarks will be in effect until modified hereunder through this review process or expiration of the interconnection agreement.

- 6.5 CLEC and SBC Ameritech shall consult with one another and attempt in good faith to resolve any issues regarding the accuracy or integrity of data collected, generated, and reported pursuant to this document. In the event that CLEC requests such consultation and the issues raised by CLEC have not been resolved within 45 days after CLEC's request for consultation, then SBC Ameritech will allow CLEC to have an independent audit conducted, at CLEC's expense, of SBC Ameritech's performance measurement data collection, computing, and reporting processes limited to the specific performance measurements in question. CLEC and SBC Ameritech must agree on the auditor chosen to conduct the audit. Inability of the parties to agree on the auditor to be chosen will be resolved through an expedited dispute resolution pursuant to Indiana Utilities Regulatory Commission Procedural Rules. In the event the subsequent audit affirms a material impact resulting from the issue raised by the CLEC, or if a different material problem is identified, SBC Ameritech shall reimburse the CLEC any expense incurred by the CLEC for such audit. SBC Ameritech is deemed to be materially at fault when a reported successful measure changes as a consequence of the audit to a missed measure. Each party to the mini-audit shall bear its own internal costs, regardless of which party ultimately bears the cost of the third-party auditor. CLEC may not request more than one audit per six calendar months under this section, and may not request an audit of the same performance measurement more than once in a twelve calendar month period. This section does not modify CLEC's audit rights under other provisions of this Agreement or any applicable Commission Order. SBC Ameritech agrees to inform all CLECs of any problem identified during an audit initiated by any CLEC.

6.5.1 Periodic Audit

SBC Ameritech agrees to periodic, regional (five-state) audit of the performance measurement data collection, transformation, result and remedy calculation, and result publication processes and systems. The first regional audit shall commence the later of eighteen months after this plan becomes effective or eighteen months after completion of the performances measurements audit of the OSS Third Party Test under Cause No. 41657. Subsequent to that initial audit, additional periodic audits will be scheduled as deemed necessary by the Commission. CLECs and the Commission will have input into the design and schedule of the audit. An independent, third party auditor retained by SBC Ameritech and approved by the Commission will conduct these audits at SBC Ameritech's expense.

7.0 Exclusions Limited

- 7.1 SBC Ameritech shall not be obligated to pay liquidated damages or assessments for noncompliance with a performance measurement, if, but only to the extent that, such noncompliance could not have been avoided by SBC Ameritech in the exercise of due

diligence. SBC Ameritech shall not be excused from payment of liquidated damages or assessments on any other grounds, except by application of the procedural threshold below. Any dispute regarding whether SBC Ameritech's performance failure is excused under this paragraph shall be resolved with the Commission through a dispute resolution proceeding under the Commission's Procedural Rules, or, if the parties consent, through commercial arbitration with the American Arbitration Association. SBC Ameritech shall have the burden of proof in any such proceeding to demonstrate that its noncompliance with the performance measurement should be excused because SBC Ameritech could not have avoided it in the exercise of reasonable diligence. Section 7.1 only suspends SBC Ameritech's ability to timely perform an activity subject to performance measurement; the applicable time frame in which SBC Ameritech's compliance with the parity or benchmark criterion is measured shall be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the excusing event. Upon commencement of the dispute resolution proceeding set forth above, SBC Ameritech shall place the liquidated damages and/or assessments in dispute in an interest-bearing escrow, to be held by a neutral third party. The outcome of the dispute resolution shall determine which party to that proceeding is entitled to the funds held in escrow, and the interest on those funds.

- 7.2 SBC Ameritech and CLEC agree that there is an aggregate annual cap of 36% of Ameritech Indiana's Net Return, which serves as a threshold for certain other events, and does not act as a ceiling on any payments by SBC Ameritech. The annual cap amounts will be determined by SBC Ameritech based on the formula of 36% of Ameritech Indiana's net return as is set forth at ¶ 436 and footnote 1332 of the FCC's December 22, 1999 Memorandum Opinion and Order in CC Docket No. 99-295. The annual cap shall be re-calculated on the first business day of the calendar year that updated ARMIS data is made publicly available. For purposes of applying the cap, the calendar year shall apply.

Once the annual threshold is established, a maximum monthly cap will be determined by dividing the amount of the annual cap by twelve. CLEC acknowledges that a maximum monthly threshold of one-twelfth of the annual threshold for Tier 1 liquidated damages and Tier 2 assessments will apply to all performance payments made by SBC Ameritech under all Ameritech Indiana interconnection agreements.

- 7.2.1 Whenever SBC Ameritech makes Tier-1 liquidated damages payments to an individual CLEC in a given month which exceed 12.5% of the monthly cap amount, or the aggregate Tier-1 liquidated damages payments to all CLECs in a given month exceed the monthly cap, SBC Ameritech may commence a show cause proceeding as provided for below. Upon timely commencement of the show cause proceeding, SBC Ameritech must pay the balance of liquidated damages owed in excess of the threshold amount into an interest-bearing escrow, to be held by a neutral third-party, pending the outcome of the show cause proceeding. To invoke these escrow provisions, SBC Ameritech must file with

the Commission, not later than the due date of the affected damages payments, an application to show cause why it should not be required to pay any amount in excess of the procedural threshold. SBC Ameritech's petition shall be in the nature of an expedited dispute resolution under this paragraph pursuant to Indiana Utility Regulatory Commission Procedural Rules. SBC Ameritech will have the burden of proof to demonstrate why, under the circumstances, it would be unjust to require it to pay liquidated damages in excess of the applicable threshold amount.

If SBC Ameritech reports non-compliant performance to a CLEC for three consecutive months on 20% or more of the measures reported to the CLEC, but SBC Ameritech has incurred no more than 4.2% of the monthly threshold amount in liquidated damages obligations to the CLEC for that period under the enforcement terms set out here, then the CLEC may commence an expedited dispute resolution under this paragraph pursuant to Indiana Utility Regulatory Commission Procedural Rules. In any such proceeding, the CLEC will have the burden of proof to demonstrate why, under the circumstances, justice requires SBC Ameritech to make payments in excess of the amount calculated under these enforcement terms.

- 7.2.2 SBC Ameritech should post on its Internet website the aggregate payments of any Tier 1 liquidated damages or Tier 2 Assessments.
- 7.3 With respect to any interconnection agreement, SBC Ameritech and any CLEC may request two expedited dispute resolution proceedings pursuant to the two preceding paragraphs before the Commission during the term of the contract without having to pay attorneys' fees to the winning company. For the third proceeding and thereafter, the requesting party must pay attorneys' fees, as determined by the Commission, if that party loses.
- 7.4 In the event that the aggregate total of Tier 1 liquidated damages and Tier 2 Assessments reaches the annual procedural threshold within the first nine months of a given year, the Commission shall commence an expedited investigation to determine, among other things, (1) whether further remedy payments are warranted, (2) whether the penalties need to be lowered under the particular circumstances, (3) whether the structure of the payments needs to be reexamined to more accurately reflect performance when payments appear excessive in view of the performance level provided, (4) or other issues raised by SBC Ameritech, the Commission or CLECs.
- 7.5 Whenever Commission proceedings are initiated by any party, or by the Commission, any liquidated damages or assessments that become due and owing shall be deposited by SBC Ameritech into an interest-bearing escrow, to be held by neutral third-parties, during the pendency of the Commission proceedings. In addition to the issues that are the subject

of the Commission proceedings, if appropriate, the Commission shall determine whether the CLEC(s) and/or the State are entitled to the funds held in escrow, and, what parties should receive the interest. Except as is determined by the Commission in the preceding sentence, all parties are to bear their own litigation costs and expenses.

7.6 Regardless of specific thresholds and resulting actions addressed above, Ameritech Indiana’s Tier 1 liquidated damages remedy liability to any individual CLEC in any month will not exceed (will be capped at) the total billed revenue due Ameritech Indiana for services provided to the CLEC in the same month for which the remedy liability was incurred.

8.0 Tier-1 Damages Payable to CLECs

Tier-1 liquidated damages apply to measures designated in Appendix 1 as Remedied when Ameritech Indiana delivers “non-compliant” performance as defined in Sections 3 and 4 above.

8.1 Liquidated damages in the amount specified in TABLE 1: Per Occurrence Liquidated Damage Amount Index Table below apply to all “non-compliant” sub-measures subject to remedies. Liquidated damages are calculated on a per occurrence basis, using the amount per occurrence taken from Table 1 below, based on the number of consecutive months for which SBC Ameritech has reported noncompliance for the sub-measure and on the overall percentage of sub-measures subject to remedies for which Ameritech Indiana met or exceeded the performance standard. For those measures listed on Appendix 3 as “Measurements That Are Subject to Per Occurrence Damages or Assessments With a Cap,” the amount of liquidated damages in a single month for a disaggregation category shall not exceed the amount listed in TABLE 2: Per Measure/Cap Liquidated Damage Amount Index Table. For those measures listed on Appendix 3 as “Measurements That Are Subject to Per Measure Damages or Assessments,” liquidated damages are calculated on a per disaggregation category basis, at the amounts set forth in Table 2. The methodology for determining the number of occurrences is addressed in “Methods of Calculating the Payment and Assessment Amounts” below.

8.2 TABLE 1 and TABLE 2 utilize an Index Value (“IV”) that establishes the level of liquidated damages assessment to be paid in the case of a failure to meet or exceed a performance standard. The IV is calculated by (1) determining the number of reported sub-measure results subject to remedies for which performance met or exceeded the standard of comparison; (2) determining the total number of reported sub-measures subject to remedies; and (3) dividing (1) by (2) and multiplying by 100.

$$IV = (RSM_{passed} \div RSM_{total}) \times 100$$

Where

RSM_{passed} = Number of Remedied Sub-Measures results where performance met or exceeded the standard of comparison

RSM_{total} = Total count of Remedied Sub-Measure results

- 8.4 For measures defined in Appendix 1 as subject to a Tier 1 performance ceiling and a Tier 1 performance floor, liquidated damages apply as indicated in Section 8.2 whenever the following occurs:
- Performance is below the ceiling performance level and above the floor performance level and not in parity; or
 - Performance is below the floor performance level, whether or not in parity.

Performance above the ceiling performance standard is deemed to have met the performance standard regardless of the result of a parity comparison. When performance for the CLEC is below the floor, liquidated damages will be calculated against the better of the floor level of performance or the parity comparison performance.

- 8.5 Following at least two consecutive months of non-compliance for a given sub-measure, liquidated damages will be subject to a "proof of compliance" period for that individual metric. This process will require Ameritech Indiana to return to compliance for a specified number of months, based on the number of consecutive months non-compliant performance, before the liquidated damages amount is reduced to the lowest, or single month of non-compliance, level. For example, if Ameritech Indiana was out of compliance for four consecutive months for a given performance measurement reported for a specific CLEC, Ameritech Indiana will have to provide this CLEC three consecutive months of compliant performance for this same sub-measure before it can begin paying the "Month 1" liquidated damage amount.
- 8.6 During this "proof of compliance" period, Ameritech Indiana will make liquidated damages payments only for those months during which the performance result for a specific sub-measure is determined to be "non-compliant" for a CLEC. This remedy payment amount will return to the lowest level of payment when Ameritech Indiana provides "compliant" performance for the number of consecutive months identified in TABLE 4: "Step-Down" Table Of Liquidated Damages For Tier 1 Measures where the payment amount is "Month One Amount".
- 8.7 SBC Ameritech is obligated to correctly and completely report performance results for CLEC and the aggregate of all CLECs. On occasion, it may be necessary for SBC Ameritech to restate previously published performance results to comply with this obligation where the originally published results were materially different from actual performance. SBC Ameritech will provide notice, via the CLEC OnLine web site, to CLEC and the Commission of each restatement, indicating the performance measurements restated, which months' performance the measurements were restated for, and why the restatement was necessary.

- 8.8 In the event that performance measurement results need to be restated, SBC Ameritech will restate those results as soon as possible for a period not to exceed the six months prior to the month for which results have most recently been reported at time of the restatement.
- 8.9 If it is determined through restatement of performance results or other means that SBC Ameritech underpaid liquidated damages due a CLEC, or assessments due the State, SBC Ameritech will make additional payment/bill credit to the CLEC and/or payments to the State to the extent that it underpaid. All underpayments will be credited with interest. Beginning with first month of performance results subject to this Remedy Plan, in the event that determination is made through restatement of performance results or other means that SBC Ameritech overpaid liquidated damages and/or assessments, future payment/bill credit to CLECs and/or future payments to the State will be offset by the amount of overage.
- 8.10 SBC Ameritech shall be able to apply any credits due to restatements of performance data (i.e., where the amount of Tier 1 liquidated damages applicable to originally stated data exceeds the recalculated liquidated damages applicable to restated performance data) toward those charges that the CLEC owes SBC Ameritech for services rendered (or facilities provided) so long as such charges are undisputed and are past due for not less than 90 days.
- 8.11 If performance for any sub-measure fails to meet the standard of performance (parity or benchmark) defined in Appendix One for three consecutive months, SBC Ameritech will, at request of the CLEC, initiate a "gap closure" effort. The "gap closure" effort will (1) identify the root cause for the failure to meet the performance standard, and (2) develop an action plan to improve performance to a level where it is meeting the standard of performance. Documentation of the root cause and the action plan to address it will be provided to the CLEC requesting "gap closure".

TABLE 1: Per Occurrence Liquidated Damage Amount Index Table						
Index Value ("IV")	Consecutive Months Missed					
	One	Two	Three	Four	Five	Six or More
IV >= 92.0%	\$25	\$50	\$100	\$200	\$300	\$400
86.0% <= IV < 92.0%	\$35	\$60	\$125	\$250	\$350	\$450
80.0% <= IV < 86.0%	\$50	\$75	\$150	\$300	\$400	\$500
74.0% <= IV < 80.0%	\$100	\$125	\$250	\$500	\$600	\$700
IV < 74%	\$150	\$175	\$350	\$700	\$800	\$900

TABLE 2: Per Measure/Cap Liquidated Damage Amount Index Table						
Index Value ("IV")	Consecutive Months Missed					
	One	Two	Three	Four	Five	Six or More
IV >= 92.0%	\$5,000	\$10,000	\$15,000	\$20,000	\$25,000	\$30,000
86.0% <= IV < 92.0%	\$7,500	\$15,000	\$22,500	\$30,000	\$37,500	\$45,000
80.0% <= IV < 86.0%	\$10,000	\$20,000	\$30,000	\$40,000	\$50,000	\$60,000
74.0% <= IV < 80.0%	\$15,000	\$30,000	\$45,000	\$60,000	\$75,000	\$90,000
IV < 74%	\$25,000	\$50,000	\$75,000	\$100,000	\$125,000	\$150,000

TABLE 3: Assessment Amounts For Tier 2 Measures	
Per Occurrence	\$200
Per Measure / Cap	\$20,000

TABLE 4: "Step-Down" Table Of Liquidated Damages For Tier 1 Measures				
Consecutive Months Compliant Performance Before Subsequent Non-Compliant Month	Consecutive Months Non-Compliant Performance Prior to First Month of Compliant Performance			
	Three Months	Four Months	Five Months	Six Months or More
Per Occurrence and Per Measure/Cap				
One Month	Month Two Amount	Month Three Amount	Month Four Amount	Month Five Amount
Two Months	Month One Amount	Month Two Amount	Month Two Amount	Month Three Amount
Three Months or More	Month One Amount	Month One Amount	Month One Amount	Month One Amount

9.0 Tier-2 Assessments to the State:

- 9.1 Assessments payable to the Indiana State Treasury apply to the Tier-2 measures designated in Appendix 1 as "Remedied" when Ameritech Indiana and/or its Affiliate performance (whichever is better, provided the affiliate data points exceed 30) is out of parity or does not meet the benchmarks for the aggregate of all CLEC data. Specifically, if the Z-test value is greater than the Critical Z, the performance for the reporting category is out of parity or below standard. Assessments will be paid when the aggregate of all CLECs has at least 10 observations.
- 9.2 For those measurements where a per-occurrence assessment applies, an Assessment as specified in TABLE 3: Assessment Amounts for Tier 2 Measures shown above for each occurrence is payable into the Indiana State Treasury for each sub-measure that exceeds the Critical Z-value for three consecutive months. For those Measurements listed in Appendix 3 as measurements subject to per occurrence with a cap, an assessment as shown in Table 3 above for each occurrence with the applicable cap is payable into the Indiana State Treasury for each sub-measure that exceeds the Critical Z-value for three consecutive months. For those Tier-2 Measurements listed in Appendix 3 as subject to a per measurement assessment, an assessment amount as shown in Table 3 above is payable into the Indiana State Treasury for each sub-measure that exceeds the Critical Z-value for three consecutive months.
- 9.3 The critical Z-value is defined in Sections 3.1 and 4.1 above.

10.0 General Assessments:

- 10.1 If SBC Ameritech fails to submit performance reports by the last business day of the month following actual performance, the following assessments apply unless excused for good cause by the Commission:
- If no reports are filed, \$5,000 per day past due;
If incomplete reports are filed, \$1,000 per day for each performance measurement listed in the User Guide for which results are not posted, but not to exceed \$5,000 per day past due.
- 10.2 If SBC Ameritech alters previously reported data to a CLEC, and after discussions with SBC Ameritech the CLEC disputes such alterations, then the CLEC may ask the Commission to review the submissions and the Commission may take appropriate action. This does not apply to the limitation stated under the section titled "Exclusions Limited."
- 10.3 When Ameritech Indiana's performance creates an obligation to pay liquidated damages to a CLEC or an Assessment to the State under the terms set forth herein, SBC Ameritech

shall make payment by check, bill credit or other direct payment method in the required amount on or before the last business day of the month following the due date of the performance measurement report for the month in which the obligation arose (e.g., if Ameritech Indiana's performance through March is such that SBC Ameritech owes liquidated damages to a CLEC for March performance, or assessments to the State for January – March performance, then those payments will be due the last business day of May, the last business day of the month following the month (April) in which results were posted). (In order to receive payment by check CLEC must complete the CLEC identification and liquidated damages Information Form located on the CLEC website.) For each day after the due date that SBC Ameritech fails to pay the required amount, SBC Ameritech will pay interest to the CLEC at the maximum rate permitted by law for a past due liquidated damages obligation and will pay an additional \$3,000 per day to the Indiana State Treasury for a past due assessment.

10.4 SBC Ameritech may not withhold payment of liquidated damages to a CLEC unless SBC Ameritech has commenced dispute resolution proceedings on or before the payment due date, pursuant to one of the provisions in Section 7 of this Document.

10.5 CLEC will have access to monthly reports on performance measures and business rules through an Internet website that includes performance results for individual CLECs, the aggregate of all CLECs, and Ameritech Indiana and/or its affiliate.

11.0 Methods of Calculating the Liquidated Damage and Assessment Amounts

The following methods apply in calculating per occurrence liquidated damages and assessments:

11.1 Calculating Tier-1 Payments

11.1.1 Measures for Which the Reporting Dimensions are Averages or Means

Step 1: Calculate the average or the mean for the sub-measure for the CLEC that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (For benchmark measures, the calculated average or mean equals the benchmark standard.—Substitute this value for the value calculated in the previous sentences.)

Step 2: Calculate the percentage difference between the actual average and the calculated average. For benchmark measures or floors (for measures that have floors and the floor applies to the result), calculate the percentage difference between the actual average and the benchmark or floor. This percentage is capped at 100%.

Step 3: Multiple the total number of data points by the percentage calculated in the previous step and round this number up to the next integer. Then multiply the

result by the per occurrence dollar amount taken from the Table 1 above to determine the applicable liquidated damages amount for the given month for that sub-measure.

11.1.2 Measures for Which the Reporting Dimensions are Percentages

- Step 1: Calculate the percentage for the sub-measure for the CLEC that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (For benchmark measures, the calculated percentage equals the benchmark standard. Substitute this value for the value calculated in the previous sentences.)
- Step 2: Calculate the difference between the actual percentage for the CLEC and the calculated percentage. For benchmark or floor measures (when the floor applies to the result), calculate the difference between the actual percentage and the benchmark or the floor.
- Step 3: Multiply the total number of data points by the difference in percentage calculated in the previous step and then round this number up to the next integer. Then multiply the result by the per occurrence dollar amount taken from Table 1 above to determine the applicable Tier 1 liquidated damages for the given month for that sub-measure.

11.1.3 Measures for Which the Reporting Dimensions are Ratios or Rates.

- Step 1: Calculate the ratio for the sub-measure for the CLEC that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure.
- Step 2: Calculate the difference between the actual ratio for the CLEC and the calculated ratio. For benchmark measures or floors (for measures that have floors and the floor applies to the result) calculate the difference between the actual ratio and the benchmark or floor. This difference is capped at 100%.
- Step 3: Multiply the total number of data points by the percentage calculated in the previous step and then round this number up to the nearest integer. Then multiply the result by the per occurrence dollar amount taken from Table 1 above to determine the applicable Tier 1 liquidated damages for the given month for that sub-measure.

11.2 Tier 2 Assessments

Determine the Tier-2 measurement results that are non-compliant for three consecutive months for the aggregate of all CLECs.

If the non-compliant classification continues for three consecutive months, an additional assessment will apply in the third month and in each succeeding month as calculated below, until SBC Ameritech reports performance that meets the applicable criterion. That is, Tier-2 assessments will apply on a “rolling three month” basis, one assessment for the average number of occurrences for months 1-3, one assessment for the average number of occurrences for months 2-4, one assessment for the average number of occurrences for months 3-5, and so forth, until satisfactory performance is established.

11.2.1 Measures for Which the Reporting Dimensions are Averages or Means.

- Step 1: Calculate the average or the mean for the sub-measure for the aggregate of all CLECs that would yield the Critical Z-value for each of the three non-compliant months. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (For benchmark measures, the calculated average or mean equals the benchmark standard. –Substitute this value for the value calculated in the previous sentences.)
- Step 2: Calculate the percentage difference between the actual average and the calculated average for each of the three non-compliant months. For benchmark measures, calculate the percentage difference between the actual average and the benchmark for each of the three non-compliant months. This percentage is capped at 100%.
- Step 3: Multiply the total number of data points for each month by the percentage calculated in the previous step. Calculate the average for three months of these numbers rounding up the result to the next highest integer. Then multiply the result by the per occurrence assessment amount in Table 3 above to determine the applicable assessment payable to the Indiana State Treasury for that sub-measure.

11.2.2 Measures for Which the Reporting Dimensions are Percentages.

- Step 1: Calculated the percentage for the sub-measure for the aggregate of all CLECs that would yield the Critical Z-value for each of the three non-compliant months. Use the same denominator as the one used in calculating the Z-statistic for the sub-measure. (For benchmark measures, the calculated percentage equals the benchmark standard. Substitute this value for the value calculated in the previous sentences.)
- Step 2: Calculate the difference between the actual percentage for the aggregate of all CLECs and the calculated percentage for each of the three non-compliant

months. For benchmark measures, calculate the difference between the actual percentage and the benchmark for the three non-compliant months.

- Step 3: Multiply the total number of data points for each month by the difference in percentage calculated in the previous step. Calculate the average for three months of these numbers rounding up the result to the next highest integer. Then multiply the result by the per occurrence assessment amount in Table 3 above to determine the applicable assessment for that sub-measure.

11.2.3 Measures for Which the Reporting Dimensions are Ratios or Rates.

- Step 1: Calculate the ratio for the sub-measure for the aggregate of all CLECs that would yield the Critical Z-value for each of the three non-compliant months. Use the same denominator as the one used in calculating the Z-statistic for the sub-measures. (For benchmark measures, calculate the value that would yield parity by adding or subtracting the Critical Z-value to the benchmark as appropriate, subject to 4.0 and the Business Rules.)
- Step 2: Calculate the difference between the actual ratio for the aggregate of all CLECs and the calculated ratio for each month of the non-compliant three-month period. For benchmark measures calculate the difference between the actual ratio and the benchmark for the three non-compliant months. This difference is capped at 100%
- Step 3: Multiply the total number of data points by the percentage calculated in the previous step for each month. Calculate the average for three months of these numbers rounding up the result to the next highest integer. Then multiply the result by the per occurrence assessment amount in Table 3 above to determine the applicable assessment for that sub-measure.

12.0 Advanced and Nascent Services

- 12.1 In order to ensure parity and benchmark performance where CLECs order low volumes of advanced and nascent services, SBC Ameritech will make additional voluntary payments into the Indiana State Treasury on those measurements listed in §12.2 below (the "Qualifying Measurements"). Such additional voluntary payments will apply only when there are more than 10 and less than 100 observations for a Qualifying Measurement on average statewide for a three-month period with respect to the following order categories (if within a Qualifying Measurement):

- UNE loop and port combinations;
- Resold ISDN;
- ISDN UNE loop and port combinations;

- BRI loop with test access; and
- DSL loops.

12.2 The Qualifying Measurements are as follows:

Provisioning Measurements:

- PMs 29, 45, 58 - Percent Ameritech Caused Missed Due Dates
- PMs 35, 46, 59 - Installation Trouble Reports Within “X” Days
- PMs 27, 43, 56 - Mean Installation Interval
- PMs 32, 49, 62 - Average Delay Days for Ameritech-Caused Missed Due Dates
- PM 55.1 - Average Installation Interval - DSL
- PM 57 - Average Response Time for Loop Qualification Information

Maintenance Measurements:

- PMs 38, 66, 68 - % Missed Repair Commitments
- PMs 41, 53, 69 - % Repeat Reports
- PMs 39, 52, 67 - Mean Time to Restore
- PMs 37, 54, 65 - Trouble Report Rate

12.3 The additional voluntary payments referenced in §12.1 will be made only if Ameritech Indiana fails to provide parity or benchmark service for the above measurements as determined by the use of the Modified Z-test and critical Z-value for either:

- three consecutive months; or
- six months or more in a calendar year.

12.4 The additional voluntary payments will only be calculated on the rolling average of occurrences or measurements, as appropriate, where Ameritech Indiana has failed to provide parity or benchmark performance for three consecutive months. If Ameritech Indiana fails to provide parity or benchmark performance for six or more months in a calendar year, the voluntary payments will be calculated as if all such months were missed consecutively.

12.5 If, for the three months that are utilized to calculate the rolling average, there were 100 observations or more on average for the qualifying measurement or sub-measurement, then no additional voluntary payments will be made into the Indiana State Treasury. However, if during this same time frame there either is (i) an average of more than 10 but less than 100 observations for a qualifying sub-measure on a statewide basis, or (ii) an average of more than 10 but less than 100 for a non-qualifying sub-measure within a qualifying measure where the measure’s average is more than 10 but less than 100

observations, then SBC Ameritech shall calculate the additional payments for advanced and nascent services into the Indiana State Treasury by first applying the normal Tier 2 assessment calculation methodology to that qualifying measurement, and then doubling that amount. The resulting total Tier 2 assessment will be triple the assessment that would have been made absent this section of the Remedy Plan.

12.6 Any payments made hereunder shall be subject to the annual cap set forth in § 7.2.

13.0 Attached hereto, and incorporated herein by reference, are the following Appendices:

Appendix 1: Performance Measurement Business Rules (Indiana)

Appendix 2: Performance Measures Subject to Tier-I and Tier-2 Damages

Appendix 3: Measurements Subject to Per Occurrence Calculation of Payments or Assessment with a Cap and Measurements Subject to Per Measure Payments or Assessment.